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LAWS OF ILLINOIS.

RELATING TO

CITIES AND VILLAGES,

WITH

NOTES AND FORMS.

To which is added the General Principles of Parliamentary Law Adapted to the Use of City Councils and Boards of Trustees.

BY ELIJAH M. HAINES.

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PREFACE.

The provisions of the constitution of 1870, prohibiting special legislation for the incorporation of cities and villages of this state, has given rise to a system of general laws for the incorporation and management of the affairs of cities and villages, which, in view of the material increase in the number of such corporations in the state, comprises an important element in our general statutes, and a knowledge of such laws, tending to their proper administration, has become a matter of interest to a large portion of the general public, dwelling in such corporations; including in the aggregate a vast number of public officers, who are entrusted with the execution of the laws and management of the affairs of this class of corporations.

A compilation of the laws relating to this subject, in one convenient volume, unincumbered with those on other subjects, properly annotated, with forms and suggestions concerning proceedings under the law, has therefore become almost indispensible for the information of citizens as well as for the convenience of lawyers and public officers. The book here presented, it is believed, will meet the requirements of those for whose immediate benefit it has been intended. The aim has been to include in this volume all the statute laws of the state applicable to cities and villages or municipal corporations of this kind, including such portions of the constitution of the state as relates thereto. To which is added copious notes of decisions of the Supreme Court of Illinois, in cases arising under the various provisions of the statutes embraced, with occasional references to elementary works and the reports of other states. In this regard the work will be of great value to the legal profession.

The book also contains a variety of general forms in various proceedings under the act concerning cities and villages, of general utility. Also forms of ordinances suggested on general subjects, for the government of cities and villages; concluding with a department embodying the general principles of PARLIAMENTARY LAW, applicable to city councils and boards of trustees. All of which is more fully set forth in the table of contents of matter contained herein.

The compiler of this work has deemed it not improper to add that having been a member of the Convention that revised and amended the present Constitution of this State, wherein was fully considered the subject of Municipal Corporations, and likewise a member of the General Assembly at the session of 1871–2, at which the present law for the Incorporation of Cities and Villages was passed, he possesses advantages and occupies a position to deal with this subject more understandingly that he possibly could have in the absence of the valuable experience derived from these circumstances.

December 2, 1878.

PLAN OF THIS WORK.

1. The object of this work is to give all the statute laws of Illinois relating to, or concerning cities and villages, in one convenient volume.

2. Notes of decisions are added in connection with the text, as properly comprising a part of the law.

3. A variety of general forms are given, including also forms of ordinances on general subjects, and rules of proceeding for city councils and boards of trustees.

4. There is added the general principles of parliamentary law, adapted to the use of city councils and boards of trustees, which would seem to be indispensible in such bodies.

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CITIES AND VILLAGES IN ILLINOIS.

Under the laws of Illinois, as now existing, cities and villages are a distinct class of municipal corporations, existing and regulated by laws adapted to the circumstances and condition of this class of corporations only. The term *village* was unknown to the statutes of Illinois until the adoption of the revised constitution in 1870. The terms used prior thereto to designate municipal corporations were *towns* and *cities*.(1) Whilst these were synonimous terms for certain purposes, the word *city* was understood to refer to a town of the largest class. The general assembly, prior to the present constitution, possessed the power of special legislation, whereby this class of municipal corporations existed in general by special charter. They were incorporated either as towns or cities, and granted such powers in each case as the condition of the inhabitants seemed to require.

The revised statutes of 1845, chapter 25, contained a general law for the incorporation of towns having a population of not less than one hundred and fifty inhabitants. But there was no general provision of these statutes for the incorporation of that class of towns denominated *cities*. In 1849 a general law was passed providing for the incorporation of cities (see laws 1849, p. 224), which is the first general act for this purpose passed by the general assembly of this state. Section four of this act provided that "the corporate authorities of all towns and cities incorporated under chapter 25, entitled 'corporations,' of the revised code or under any special act, shall have power to pass all ordinances and by-laws and possess all the powers authorized under the laws and amendatory acts incorporating either of the cities of Springfield or Quincy: *Provided*, that towns containing a population of less than fifteen hundred white inhabitants shall have no other officers or allow any other compensation than is allowed under chapter 25 of the revised code, unless expressly authorized by law." The effect and apparent object of the proviso in the foregoing section seems to have been to divide the incorporated towns of the state into two classes according to population, corresponding to the cities and villages of to-day, as existing under general law, The first grade styled *towns*, with limited powers, and the second denominated cities, with more general and enlarged powers.

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(1) The constitution of Illinois recognizes counties, cities, townships and school districts as municipal corporations. See Const. Ill., Art. IX, § 12.

Section five of the general law aforesaid provided that "the inhabitants of any town containing a population of not less than fifteen hundred inhabitants may be incorporated by the name and style of the 'city of ——,' where a majority of the legal voters thereof shall vote in favor of being incorporated as a city, at an election to be held at the court house, notice being given by being published for two weeks in succession, in any newspaper published in said town, by the president and trustees of said town, or by giving notice as may be prescribed under an ordinance, passed by the president and trustees of said town."

Section six of said act further provided that "all the articles and provisions in either of the acts incorporating Quincy or Springfield, prescribing the duties of the president and trustees ordering an election of city officers, prescribing the powers of the city, of the city council, executive officers, elections, legislative powers of the council, of the mayor, proceedings in special cases, and miscellaneous provisions, shall be the rule by which the corporate authorities of any city incorporated under the provisions of this act shall be governed." Thus the charters of the cities of Quincy and Springfield became a part of the general law of the state, for the incorporation of cities.

The word *town* in our language comes from the Saxon word *tun*, which signified an inclosure surrounding the mere homestead or dwelling of the lord of the manor. By the progress of events, and the alteration of times and language, the word town has become a generical term, comprehending under it the several species of cities, boroughs, villages, and indeed any considerable collection of houses. The word is also used in the statutes and in common speech as synonomous with *township*.

In England, the various species of towns, when classified, are cities, boroughs, vills or villages, and hamlets. According to Blackstone,(1) a *vill* is a town which had originally a church and celebration of divine service, sacraments and burial. A *city* is a town incorporated, which is or has been the see of a bishop. A *borough* is understood to be a town, either corporate or not, that sends burgesses to parliament. A *hamlet* is a small collection of houses adjacent to a town of larger population, existing as a sort of apendage thereto. These various classes of towns possessed a variety of powers and privileges, not uniform as to class nor dependent upon the extent of population, but rather from custom or prescription.

In Illinois, according to the statutes at the present time, there are but two classes of towns, viz: *cities* and *villages*. A city is a town incorporated having a population of not less than one thousand inhabitants.(2) A village is a town having a population less than a city, but not less than three hundred inhabitants, of contiguous territory not exceeding two square miles.(3)

(1) 1 Black. Com., 115.
(2) See *post*, p. 19, § 4, 5.
(3) See *post* p. 112, § 182.

The term *village*, however, in the common acceptation of the term, does not necessarily imply a town that is incorporated; whenever this term is used without qualification or restriction, it comprehends any small assemblage of houses occupied by citizens, laboring people and farmers, with a name and defined locality.(1) The supreme court of Illinois have said that any small assemblage of houses for dwellings or business, or both, in the country constitutes a village, whether they are situated upon regularly laid out streets and alleys, or not. That a place at a railroad station where there was a mill, a blacksmith shop, a store and a grocery, with dwelling houses to accommodate those carrying on said business, was a village in the common acceptation of the term.(2)

The first attempt to change the anomlous system of organization of municipal corporations in Illinois, and to classify towns under general provisions of law, was in the constitutional convention of 1869–'70. See debates and proceedings , p. 155, where it is recorded that Mr. Haines, of Lake, offered the following amendment to the constitution: "Towns comprising a collection of houses may be incorporated for municipal purposes. Such corporations shall be divided into two classes according to population, as the general assembly shall deem proper. The smaller towns shall be known as villages, and the larger towns as cities. Each class shall be granted by general laws, such corporate powers and privileges as may be necessary for their government and regulation, but the general assembly may grant special powers and privileges to municipal corporations, where it shall appear that the object sought cannot be attained by general laws; which fact shall be expressed in the act as the evidence thereof."

And this is the first occurrence of the term *village* as applied to municipal corporations in any legislative proceedings in the history of the state. The substance of this proposition, except as to classification of municipal corporations, was adapted and became a part of of the constitution.(3)

As the constitution prohibited further special legislation concerning municipal corporations, it becomes necessary to perfect the general statutes on that subject.

In the interest of this movement, a convention composed of city and town officers of the state assembled a Springfield, in January, 1871, at the commencement of the session of the general assembly, being the first session after the adoption of the revised constitution. This convention prepared a bill for a general law for the incorporation of cities and villages, which was submitted to the general assembly through a committee appointed for that purpose. Before this bill had received attention, Senator Edsall, chairman of the senate committee on municipalities, now attorney

(1) *Herbert et el.* v. *Lavalle*, 27 Ill. R., 448.

(2) *Ills. Cen. R. R. Co.* v. *Williamson*, 27 Ill. R., 48.

(3) See *post* p. 23, note.

general, introduced in the senate a bill which he had prepared on the subject, entitled, "A bill for an act to provide for the incorporation of cities and villages," which was referred to said committee. A few days thereafter, the bill prepared by the convention aforesaid was introduced in the senate by Senator Woodard, entitled, "A bill for an act to enable cities to become incorporated under general incoporation laws, and to regulate their municipal affairs," which was also referred to the committee on municipalities. Senator Edsall thereupon proceeded, with the assistance and advice of the members of his committee, and revised the bill he had introduced by adopting such portions of the bill introduced by Senator Woodard, as were deemed valuable, aided by suggestions from numerous special charters examined. The bill thus perfected was reported to senate and passed unanimously.

In the house of representatives the bill was referred to the committee on municipal affairs, of which Mr. Waite was chairman, by which several amendments were made and some new provisions added, one of which was proposed by Mr. Root concerning special assessments; the bill as amended passed the house March 29, 1872.(1) The house amendments were concurred in by the senate, and the bill was approved by the governor April 10, 1872, which is our present law for the incorporation of cities and villages embraced in this book.

The original intention in framing this bill seems to have been not only to divide or classify municipal corporations of this kind into two principal classes of cities and villages, but to divide cities also into classes according to population, giving and regulating their powers accordingly, as will be noticed by § 185, 186 post p. 113, 114. The provisions referred to in said sections in relation to cities not exceeding five thousand inhabitants, seem not to have been preserved in perfecting the previous portions of the act. Thus leaving all cities upon the same footing without regard to population. Indeed giving to villages the same general powers as cities; but differing and being restricted in the mode of constituting their organization. In the place of city council, of mayor and aldermen, villages have a president and trustees, comprising a board limited to six members.(2) The law also seems to contemplate that the official force of a village will be constituted upon a more restricted plan than that of a city, being subject to the complete control and direction of the president and board of trustees.(3.)

(1) See house journal 1871-2, vol. 2, p. 1,118.

(2) See *post* p. 113, § 185.

(3) See *post* p. 114, §188.

LAWS OF ILLINOIS.

RELATING TO

CITIES AND VILLAGES.

DIVISION I.

ACTS OF THE GENERAL ASSEMBLY.

I. GENERAL INCORPORATION ACT FOR CITIES AND VILLAGES.

AN ACT to provide for the incorporation of Cities and Villages. [Approved April 10, 1872. In force July 1, 1872. Laws 1871-2, p. 218. Rev. Stat., Ch. 24.]

ARTICLE I.

OF THE ORGANIZATION OF CITIES.

1. How city may adopt this act.
2. Notice of election.
3. The ballots—result.
4. How towns may become cities.
5. Organizing a city—petition—election—result.
6. Courts to take judicial notice of organization, etc.
7. Election of Officers,
8. When county Judge to give notice of election, etc.
9. Term of first officers.
10. Corporate name—powers.
11. Prior ordinances, etc., in force until, etc.
12. Rights, etc., of old corporation to vest in new.
13. Record of result of election.

1. How city may adopt this act.] § 1. That any city now existing in this state may become incorporated under this act in manner following: Whenever one-eighth of the legal voters of such city, voting at the last preceding municipal election, shall

petition the mayor and council thereof to submit the question as to whether such city shall become incorporated under this act, to a vote of the electors in such city, it shall be the duty of such mayor and council to submit such question accordingly, and to appoint a time and place, or places, at which such vote may be taken, and to designate the persons who shall act as judges at such election;(1) but such question shall not be submitted oftener than once in four years.(2) [See § 53, 55.

2. Notice of elections.] § 2. The mayor of such city shall give at least thirty days' notice of such election, by publishing a notice thereof in one or more newspapers within such city; but if no newspaper is published therein, then by posting at least five copies of such notice in each ward.(3)

3. The ballot—Result.] § 3. The ballots to be used at such election shall be in the following form: "For city organization

(1) See form of petition, and order of mayor and council, submitting question to a vote, Div. II, *post.*

(2) **Where a city changes its organization** by adopting a general law for the incorporation of cities, it does so subject to the power of the legislature to repeal or amend the same. *Guild* v. *City of Chicago*, 82 Ill. R., 472.

The validity of the organization of a city under the general act of 1872, can be determined only by a direct proceeding, in the nature of a *quo warranto*. *Sheridan et al.* v. *Colvin et al.*, 78 Ill. R., 237

Whether a city has forfeited its charter can only be raised in a direct proceeding for that purpose, by *scire facias* or *quo warranto*. *Whalin* v. *City of Macomb*, 76 Ill. R., 49.

Submitting question of incorporation to vote of electors. The law does not provide in the above section, as will be observed, the mode of submitting the question of organization to a vote of the electors, whether by ordinance or otherwise. It simply provides that the act of submission shall be by the mayor and council. The mode should probably be by an order of the mayor and council. It is proper that the yeas and nays should be taken and entered on the journal, on adopting the order, which would give to it in this regard the force of an ordinance. As the law requires specially, that the act shall be that of the mayor *and* council, it would seem as the intention of the law that the mayor should vote with the aldermen on the question. The above section seems to imply that for this purpose the mayor is a separate authority from the council. The proceedings to become incorporated under the general law must be conducted according to the provisions of this act.

The duty of the mayor and council, in submitting the question of organization, under the general law, has recently been considered and determined in the Supreme Court, in a case arising in East St. Louis. This city existed as a corporation under a special charter granted in 1869. A petition of the required number of legal voters of the city was presented to the mayor and council, praying that the question of incorporation under the general law be submitted to a vote of the legal voters of the city, which the council refused. Thereupon the mayor gave the required notice of an election to vote on said question, and fixed the time of holding said election. An election was held accordingly, which resulted in favor of incorporation under the general law. The returns of the election were duly canvassed and the result entered as the law provides. In a proceeding by *quo warranto* against the city officers newly elected, it was held that such election and all subsequent proceedings by virtue of it were void because it was not ordered by the mayor and council as the law provides. That the mayor had no authority to give notice and fix the time and place of holding the election in the absence of any action by the council. That the time and place could only be fixed by the mayor and council, and that this omission was not cured, nor the act of the mayor rendered valid by the fact that the council canvassed the returns of the election, and thereafter by a vote, approved of the act of the mayor in calling the election. That no election for this purpose could be made legal unless called, and the time and place fixed by the mayor and council. *Stephens* v. *The People ex. rel., Wider et al.*, Sup. Court Ill., Sept. term, 187

(3) See form of notice of election, by mayor, Div. II, *post.*

A failure to state in the notice where the election shall be held, when places of holding the election are in fact appointed, will not render invalid the election because the places of voting are not specified. *Chicago* v. *The People ex rel. etc.*, 80 Ill. R., 496

under general law;" or "Against city organization under general law." The judges of such election shall make returns thereof to the city council, whose duty it shall be to canvass such returns, and cause the result of such canvass to be entered upon the records of such city.(1) If a majority of the votes cast at such election shall be for city organization under general law, such city shall thenceforth be deemed to be organized under this act; and the city officers then in office shall, thereupon, exercise the powers conferred upon like officers in this act until their successors shall be elected and qualified.(2)

4. How towns may become cities.] § 4. Any incorporated town or village, in this State, having a population of not less than one thousand (1000) inhabitants, may become incorporated as a city in like manner as hereinbefore provided; but in all such cases the president and trustees of such town or village shall, respectively, perform the same duties relative to such change of organization as is above required to be performed by the mayor and council of cities.(3) [As amended by act approved March 25, 1877, in force July 1, 1877.](4)

5. Organizing a city — Petition — Election — Result.] § 5. Whenever any area of contiguous territory in this state, not exceeding four square miles, shall have resident thereon a population of not less than one thousand inhabitants, which shall not already be included within any incorporated town or city, the same may become incorporated as a city in manner following: Any fifty legal voters thereof may file in the office of the clerk of the county court, of the county in which such inhabitants reside, a petition, addressed to the judge of such court; and if the territory described in said petition shall be in more than one county, then the petition shall be addressed to the judge of the court where a greater part of such territory is situated; which petition shall define the boundaries of such proposed city, and state the number

(1) See form of canvass of votes, and result to be entered upon the records of the city. Div. II, *post*.

(2) **Gross irregularities by the judges of election** in conducting an election in specified wards of a city will not necessarily render the election void. Such irregularities may be reason for rejecting returns from wards specified. *Chicago* v. *The People ex rel.*, 80 Ill. R., 496.

(3) The proceedings under this section will be substantially the same as prescribed under the preceding sections, in case of changing from a special city charter. See forms Div. II, *post*.

(4) **The term town, or incorporated town,** existed in the statutes of this State prior to the revision of the constitution in 1870. Previous to that the statutes provided by a general incorporation law for the organization of municipal corporations styled *towns*, where the population exceeded one hundred and fifty inhabitants. Rev. Stat. 1845, chap. 25. The term *village* was not used in our law until the present constitution. Special charters were likewise granted by the legislature in numerous instances, creating municipal corporations, with limited powers, styled *towns*. Incorporated towns mentioned in this act has reference to those corporations created as aforesaid.

of inhabitants residing within such limits, and also state the name of such proposed city, and shall contain a prayer that the question be submitted to the legal voters residing within such limits, whether they will organize as a city under this act.(1) It shall be the duty of the county judge to fix a time and place, within the boundaries of such proposed city, at which an election may be held to determine such question; and such judge shall name the persons to act as judges in holding such election, and shall give notice thereof by causing ten notices to be posted in public places within such proposed city.(2) And the third section of this article shall be applicable to such election: *Provided*, that the returns of such election shall be made to and canvassed by the county judge and any two justices of the peace whom he shall call to his assistance, instead of the city council; and the result of such election shall be entered upon the records of such county court.(3) If a majority of the votes cast at such election shall be "For city organization under general law," the inhabitants of such territory, described in such petition, shall be deemed to be incorporated as a city, under this act, and with the name stated in the petition. [See § 175.(4)

6. Courts to take judicial notice of organization, etc.] § 6. All courts in this state shall take judicial notice of the existence of all villages and cities organized under this act, and of the change of the organization of any town or city from its original organization to its organization under this act; and from the time of such organization, or change of organization, the provisions of this act shall be applicable to such cities and villages, and all laws in conflict therewith shall no longer be applicable. But all laws or parts of laws, not inconsistent with the provisions of this act, shall continue in force and applicable to any such city or village, the same as if such change of organization had not taken place.(5)

(1) See form of petition for organizing city of contiguous territory, Div. II, *post.*

(2) See form of notice of election by county judge, Div. II, *post.*

(3) See form of entry of result of election upon records of the county court, Div. II, *post.*

(4) **In the absence of constitutional limitation,** the legislature has power to create municipal corporations, as well in regard to a town six miles square, as to a village with less territory. *Greeley* v. *The People*, 60 Ill. R., 19; *Lankenan* v *The People* 62 Ill. R., 287· *Castle* v. *The People*, 62 Ill. R., 287.

(5) **Before judicial notice can be taken of a change** in the organization of a city, or of an original organization under the law of 1872, it must somewhere and in some way appear in the record that the city or its authorities are acting under this law. *Brush* v. *Lemma*, 77 Ill. R. 496.

Courts will judicially notice the charter or incorporating act of a municipal corporation without being specially pleaded, not only when it is declared to be a public statute, but where it is public or general in its nature or purposes, though there is no express provision to

7. Election of officers.] § 7. It shall be the duty of the president and board of trustees of any town which shall have voted to change its organization to a city, under this act, to call and give notice of an election to elect city officers, and to designate the time and place or places of holding the same. Such notice shall be published in a newspaper, if there be one, within the town, or posted in ten public places, for at least twenty days before such election.(1) Such president and trustees shall appoint the judges and clerks to hold such election, canvass the returns thereof, and cause the result to be entered upon the records of the town; and the provisions of this act, relative to the election of city officers, shall be applicable thereto; but, at such election, aldermen may be elected on a general ticket.(2)

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that effect. But the acts, votes, and ordinances of the corporation are not public matters, and must be pleaded. Dillon on Mun. Corp., § 50.

Until there is an organization by election and qualification of the number of persons, being the several integral parts of the corporation, required by the act of incorporation, no municipal corporation or government is in existence. *Haynes* v. *Co. of Washington*, 19 Ill. R., 66.

Irregularities in the Proceedings to organize a corporation are not favored when set up, long afterwards, to defeat the corporate existence. *Jameson* v. *People*, 16 Ill. R., 257; *Fitch* v. *Pinckard*, 4 Scam. R., 76; *Dunning* v. *Railroad Co.*, 2 Ind. R., 437.

Where a corporation is created, and declared to exist as such, by the legislature, without condition, proof of organization or user is not necessary to enable them to maintain an action. *Cahill* v. *Insurance Co.*, 2 Doug. (Mich.) R., 124; *Fire Department* v. *Kipp*, 10 Wend. R., 266; Dillon on Mun. Corp., p. 168, note 1.

But the day indicated by the Legislature as the day on which the election at the organization is to be held is merely directory, and an election may be had upon a subsequent day. *Coles County* v. *Allison*, 23 Ill. R. 437. So the annual election may be held afterwards, when the annual day has, by some means free from design or fraud, been passed by without an election. *People ex rel.* v. *Fairbury*, 51 Ill. R., 149.

Where a municipal corporation has been recognized by enactment of the General Assembly, all inquiry into the original organization of the corporation is precluded, and after long continued use of corporate powers, and the acquiescence of the public in them, the law will indulge in presumptions in support of their legal existence. *Jameson et al.* v. *The People ex rel.*, 16 Ill. R., 257. *The People ex rel* v. *Farnham et al.*, 35 Ill. R., 562.

The powers conferred upon municipal corporations may at any time be altered or repealed by the legislature, either by a general law operating upon the whole State, or in absence of constitutional restriction by special act. Dillon on Mun. Corp., § 52, and cases cited.

Repeals by implication are not favored; and special laws conferring particular rights upon municipal corporations were held not to be repealed by subsequent statutes, general in their character. *Ottawa* v. *County*, 12 Ill. R., 339; Egypt Street, 2 Grant (Pa.) Cas. 455.

It is a principle of very extensive operation, that statutes of a general nature do not repeal, by implication, charters and special acts passed for the benefit of particular municipalities. Dillon on Mun. Corp., § 54, and cases cited.

Production of the Charter, and proof of acts done under and in conformity with it, is sufficient to prove the existence of the corporation. *President, etc.* v. *Thompson*, 20 Ill. R., 197. *Hamilton* v. *President, etc., Carthage*, 24 Ill. R., 22; *Kettering* v. *Jacksonville*, 50 Ill. R., 39.

The existence of a municipal corporation cannot be put in question collaterally, as in a proceeding to collect a fine. *President, etc.*, v. *Thompson*, 20 Ill. R., 197; *Hamilton* v. *President, etc., Carthage*, 24 Ill. R., 22; *Kettering* v. *Jacksonville*, 50 Ill. R., 39.

After a corporation has been regularly organized, a subsequent election of a person ineligible to an office does not of itself dissolve the corporation. *President, etc.*, v. *Thompson*, 20 Ill. R., 197.

An information in the nature of a quo warranto, on the relation of a private individual, will not lie against a municipal or public corporation, such as a city, village or town. Per McAllister, Breese and Walker, JJ., *Chicago* v. *The People ex rel.*, 80 Ill. R., 496.

An election for the adoption of a Charter, by a city, town or village, cannot be contested by *quo warranto*. Per Walker, J., *Chicago*, v. *The People ex rel.*, 80 Ill. R., 496

(1) See form of notice for election of officers, Div. II, *post*.

(2) See *post*, Art. III. The forms given in case of city elections may be used in elections under the above section.

8. When county judge to give notice of an election, etc.] §8. In case of cities organizing under section five (5) of this article, the county judge shall call and give notice of the election, and perform the same duties relative thereto as is above required to be performed by president and trustees of such town, and in canvassing such returns shall call to his assistance two justices of the peace. [See § 52.

9. Term of first officers.] § 9. The city officers elected under either of the preceding sections, shall hold their respective offices until the next succeeding regular election for such officers, respectively, and until their successors are elected and qualified, as provided in this act.

10. Corporate name—Powers.] § 10. Cities organized under this act shall be bodies politic and corporate, under the name and style of "City of (name)," and under such name may sue and be sued, contract and be contracted with, acquire and hold real and personal property for corporate purposes, have a common seal, and change the same at pleasure, and exercise all the powers hereinafter conferred.(1)

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(1) **Incorporated cities are liable, in this State, to a private action** for the recovery of damages resulting from a neglect of duty on the part of the city authorities to keep its streets and cross walks in repair. *City of Peru* v. *French*, 55 Ill. R., 318,

A plaintiff can not recover for injuries received through the defendant's negligence, where his own negligence has contributed to such injuries, unless his negligence was slight and that of the defendant gross when compared with each other. *Village of Kewanee* v. *DePew*, 80 Ill. R., 119.

A party has no right to knowingly expose himself to danger, and then to recover damages for an injury which he might have avoided by reasonable precaution. *Meidel* v. *Anthis*, 71 Ill. R., 240.

A municipal corporation is not liable to vindictive or punitive damages, unless there is proof that the injury is wilful. *City of Chicago* v. *Kelly*, 69 Ill. R., 475.

In an action to recover for a personal injury received in consequence of negligence and omission of duty on the part of a city, evidence that plaintiff had a wife, seven young daughters and two sons, in Ireland, at the time of the accident, and that he was their supporter, as a lecturer; it was held that exemplary damages were not recoverable in such case. *City of Chicago* v. *O'Brennan*, 65 Ill. R., 160.

The power to sue and be sued, includes authority to settle or adjust claims, by a municipal corporation. *President, etc.*, v. *Mappin et al.*, 14 Ill. R., 193.

When a municipal corporation settles with a party who has been injured by the negligence of one of the citizens in leaving a hole opened at night without warning, to entitle it to recover back from such wrong doer, it must show by its pleadings and proofs that the town was legally liable to the party injured. *Fahey* v. *Pres. and Trustees Town of Harvard*, 62 Ill. R., 28.

Municipal corporations are bodies politic and corporate, established by law, to share in the civil government of the country, but chiefly to regulate and administer the local or internal affairs of the city, town or district which is incorporated. But they possess only such powers as are expressly conferred by their charter or are necessary to carry into effect powers granted. *President, etc.*, v. *Mappin et al.*, 14 Ill. R., 193; Dillon on Mun. Corp., § 9,

A body corporate can act only in the mode prescribed by the law creating it, and a lease executed by a corporate town without a seal is void. *Kinzie* v. *Trustees of Chicago*, 2 Scam. R., 187.

In general a city, as a corporation, can only bind itself for the payment of money for labor done for its benefit, by ordinance or by resolution or authorizing its officers, by either of these modes, to make such contract. *Alton* v. *Mulledy et al.*, 21 Ill. R., 76.

The usual manner, however, in which a municipal corporation of this kind speaks, acts, or binds itself for payment of money for labor or services rendered is by ordinance or resolution.

11. Prior ordinances, etc., in force until, etc.] § 11. All ordinances, resolutions and by-laws in force in any city or town when it shall organize under this act, shall continue in full force and effect until repealed or amended, notwithstanding such change of organization; and the making of such change of organization shall not be construed to effect a change in the legal identity, as a corporation, of such city or town.

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adopted by the common council of the incorporation. *Town of Athens* v. *Thomas et al.*, 82 Ill. R., 259,

But there are instances, it is held, where corporations can be bound by contracts made by their agents, though not under seal, and also on implied contracts, to be deduced, by inference, from corporate acts, without either a vote or deed in writing. *Town of Athens* v. *Thomas et al.*, 82 Ill. R., 259.

Compensation for work done outside of a special contract for a city, by direction of the Board of Public Works, not contemplated by any specifications in the original contract, and which was highly advantageous to the main work, may be recovered in an action against the city. *Sanger et al.* v. *City of Chicago*, 65 Ill. R., 507.

Contracts of a public corporation made through its officers without authority are void, and in actions thereon the corporation may interpose the plea of *ultra vires*, setting up as a defense, its own want of power, under its charter or constituent statute to enter into the contract. *Miller* v. *Goodwin*, 75 Ill., 659; *People* v. *Dupuyt*, 71 Ill. R., 651.

Powers conferred upon municipal corporations for public purposes, cannot be delegated, bargained or bartered away. Such corporation may make authorized contracts, but they have no power, as a party, to make contracts or pass by-laws which shall cede away, control or embarass their legislative or governmental powers, or which shall disable them from performing their public duties. Dillon on Mun. Corp., § 6, and cases cited.

Statute of limitation and estoppel. Municipal corporations ase not, as respects public rights, within the ordinary limitation statutes, still, the principle of an estoppel *in pais* is applicable in such cases, but it is left to the court to hold the public estopped or not, as right and justice may require. *C. R. I. & P. R. R. Co.* v. *City of Joliet*, 79 Ill. R., 25.

The doctrine of estoppel *in pais* applies to municipal corporations; but mere non-action of its officers is not sufficient to work an estoppel as against a municipal corporation. *Logan County* v. *City of Logan*, 81 Ill. R., 156.

A municipal corporation may avail itself of the statute of limitations of two years, in a suit by a private citizen to recover damages for a personal injury. *Leroy* v. *City of Springfield*, 81 Ill. R., 114.

An execution cannot be rightfully issued against a municipal corporation on a judgment for debt or damages, or costs rendered against it. *City of Kinmundy* v. *Mahan*, 72 Ill. R., 462; *City of Bloomington* v. *Brokaw*, 77 Ill. R., 194.

The constitution prohibits special legislation affecting cities, towns and villages. The essential provisions of the constitution in this regard are as follows, Art. IV·

"§ 22. The general assembly shall not pass local or special laws in any of the following enumerated cases, that is to say, for—

Vacating roads, town plats, streets, alleys and public grounds.

Regulating the jurisdiction and duties of justices of the peace, police magistrates and constables.

Incorporating cities, towns or villages, or changing or amending the charter of any town, city or village.

Providing for the election of members of the board of supervisors in townships, incorporated cities or towns.

In all other cases where a general law can be made applicable, no special law shall be enacted."

"§ 23. The general assembly shall have no power to release or extinguish, in whole or in part, the indebtedness, liability, or obligation of any corporation or individual to this state or to any municipal corporation therein."

The clauses of section 22, article 4, of the constitution, which prohibits the general assembly from passing local or special laws incorporating cities, towns or villages, or changing or amending the charter of any city, town or village, is applicable to and restrictive of the general assembly, in the enactment of charters or amendments to charters for cities and villages.

12. Rights, etc., of old corporations to vest in new.] § 12. All rights and property of every kind and description, which were vested in any municipal corporation under its former organization, shall be deemed and held to be vested in the same municipal incorporation upon its becoming incorporated under the provisions of this act; but no rights or liabilities, either in favor of or against such corporation, existing at the time of so becoming incorporated under this act, and no suit or prosecution of any kind, shall be affected by such change, but the same shall stand and progress as if no change had been made: *Provided*, that when a different remedy is given by this act, which may properly be made applicable to any right existing at the time of such city so becoming incorporated under this act, the same shall be deemed cumulative to the remedies before provided, and used accordingly.(1)

13. Record of result of election.] § 13. The corporate authorities of any city or village which may become organized under this act shall, within three months after organization hereunder, cause to be filed in the office of the recorder of deeds, in the county in which such city or village is situated, a certified copy of the entry made upon the records of the city, village or county court, of the canvass of the votes, showing the result of such election, whereby such city or village became so organized—and such recorder of deeds shall record the same. And such corporate authorities shall also cause a like certificate to be filed in the office of the secretary of state, who shall file the same, and keep a registry of cities and villages organized under this act.

It has no reference to past legislation, but simply prescribes the limit of future legislation in this respect, *Covington* v. *City of East St. Louis*. 78 Ill. R., 548.

Section 23, art. 4, of the constitution of 1870, which provides that the general assembly shall have no power to release or extinguish in whole or in part the indebtedness, liability or obligation of any corporation or individual to the state, was not intended to embrace a release of claims doubtful or hazardous, which the state may hold against a municipal or other corporation. *Burr* v. *City of Carbondale*, 76 Ill. R., 455.

The powers granted to municipal corporations are not vested rights; their charters may be amended, changed or repealed by the legislature. Such corporations are subject at all times to the legislative will, or law making power of the state. *Town of Mt. Carmel* v. *Wabash County*, 50 Ill. R., 69.

But the power of the legislature to repeal the charter of a city cannot be extended to the right to divert property given to the public for one use to a wholly different and inconsistent one. The power cannot exist to divert property from the purpose to which it was donated. Even upon a repeal of the charter of the city, the trust would not cease, if its purpose can be ascertained, but it will be enforced for the benefit of those for whose use it was intended. *City of Jacksonville* v. *Jacksonville R. W. Co.*, 67 Ill. R., 540.

(1) **The new corporation is but a continuation of the old one.** It has merely changed its machinery of government, and it is still subject to the liabilities of the old corporation. Any debt incurred by the corporation while under its former organization would continue to be the debt of the corporation under its new organization. The transition from one organization to another does not work a dissolution or civil death of the corporation so as to affect its indebtedness. *Olney* v. *Harvey et al.*, 50 Ill. R., 453. *Held* in this case that a writ of *mandamus* will lie to compel a municipal corporation to pay a judgment rendered against it, there being no other adequate remedy, as an execution cannot be levied upon the property of such a corporation.

ARTICLE II.

OF THE MAYOR.

14. Mayor—his qualifications.
15. Vacancy one year or more.
16. Vacancy less than year.
17. Mayor *pro tem.*
18. Vacancy by removal from city.
19. Mayor to preside—casting vote.
20. When he may remove officers.
21. His powers to keep peace.
22. Release of prisoners.
23. General duties.
24. To examine records, etc.
25. Messages to council.
26. To call out militia, etc.—riots, etc.
27. Misconduct, etc., of mayor or other officers—penalty.
28. Revising ordinances after change of organization.

14. Mayor—his qualifications.] § 1. The chief executive officer of a city shall be a mayor, who shall be a citizen of the United States, a qualified elector, reside within the city limits, and hold his office for two years, and until his successor is elected and qualified.(1)

15. Vacancy one year or over.] § 2. Whenever a vacancy shall happen in the office of the mayor, when the unexpired term shall be one year or over from the date when the vacancy occurs, it shall be filled by an election.(2)

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(1) **Where residence within the corporate limits is necessary** in order to be eligible to hold an office, permanent removal from the municipality may undoubtedly be taken as evincing an intention to resign, and as an implied resignation. Dillon on Mun. Corp., § 167.

Where an act provided that the mayor of a city should hold his office for one year, and should also have and exercise, by virtue of his said office, the jurisdiction and duties of a justice of the peace, and be commissioned by the governor as such, it was *held* void in view of the provision of the constitution fixing the term of office of justice of the peace at four years. That a person could not be recognized as a judicial officer of that kind whose term of office was prescribed for less than four years. *People* v. *Maynard*, 14 Ill. R., 419.

(2) **On the subject of vacancy in elective offices** the statute concerning elections, chap. 46, has made the following provision as to when a vacancy exists and how that fact may be determined:

Rev. Stat., 466, "**When office becomes vacant.**] § 125. Every elective office shall become vacant on the happening of either of the following events, before the expiration of the term of such office:

First—The death of the incumbent.
Second—His resignation.
Third—His becoming insane.
Fourth—His ceasing to be an inhabitant of the state; or, if the office is local, his ceasing to be an inhabitant of the district, county, town or precinct for which he was elected.
Fifth—His conviction of an infamous crime, or of any offense involving a violation of official oath.
Sixth—His removal from office.

16. Vacancy less than year.] § 3. If the vacancy is less than one year, the city council shall elect one of its number to act as mayor, who shall possess all the rights and powers of the mayor until the next annual election, and until his successor is elected and qualified.

17. Mayor pro tem.] § 4. During the temporary absence or disability of the mayor, the city council shall elect one of its number to act as mayor *pro tem.*, who during such absence or disability, shall possess the powers of mayor.

18. Vacancy by removal from city.] § 5. If the mayor, at any time during the term of his office, shall remove from the limits of the city, his office shall thereby become vacant.

19. Mayor to preside—Casting vote.] § 6. The mayor shall preside at all meetings of the city council, but shall not vote except in case of a tie, when he shall give the casting vote.

20. When he may remove officers.] § 7. The mayor shall have power to remove any officer appointed by him, on any former charge, whenever he shall be of the opinion that the interests of the city demand such removal; but he shall report the reasons for such removal to the council at its next regular meeting.(1)

21. His powers to keep peace.] § 8. He may exercise, within the city limits, the powers conferred upon sheriffs, to suppress disorder and keep the peace.(2) [See § 83; also Rev. Stat. "Sheriffs," ch. 125, § 17; "Crim. Code," ch. 38, § 340.

22. Release of prisoners.] § 9. He may release any person imprisoned for violation of any city ordinance, and shall report

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Seventh—His refusal or neglect to take his oath of office, or to give or renew his official bond, or to deposit or file such oath or bond within the time prescribed by law.
Eighth—The decision of a competent tribunal declaring his election void."

"**Who may determine when vacancy exists.**] ℔ 126. Whenever it is alleged that a vacancy in any office exists, the officer, court, or county board whose duty it is to fill the vacancy by appointment, or to order an election to fill such vacancy, shall have power to determine whether or not the facts occasioning such vacancy exist."

Under the foregoing provisions the proper authority in cities and villages to determine as to a vacancy would be the city council or board of trustees.

(1) **The power to remove a corporate officer from his office,** for reasonable and just cause, is one of the common law incidents of all corporations. Dillon on Mun. Corp., ℔ 179.

When the terms under which the power of removal from office is to be exercised, are prescribed, they must be pursued with strictness. Dillon on Mun. Corp., ℔ 183, and cases cited.

(2) **Concerning the powers of sheriffs to suppress disorder and keep the peace,** the statute has made the following provisions, chapter 125:

Rev. Stat. 990, "**Conservator of the peace.**] ℔ 17. Each sheriff shall be conservator of the peace in his county, and shall keep the same, suppress riots, routs, affrays, fighting, breaches of the peace, and prevent crime; and may arrest offenders on view, and cause them to be brought before proper magistrates for trial or examination." [See "Criminal Code," ch. 38, ℔ 253, 340.

"**Posse comitatus.**] ℔ 18. To keep the peace, prevent crime, or to execute any writ, warrant, process, order or decree, he may call to his aid, when necessary, any person or the power of the county." [See "Criminal Code," ch. 38, ℔ 245

such release, with the cause thereof, to the council at its first session thereafter.

23. General duties.] § 10. He shall perform all such duties as are or may be prescribed by law or by the city ordinances, and shall take care that the laws and ordinances are faithfully executed.(1).

24. Power to examine records, etc.] § 11. He shall have power at all times to examine and inspect the books, records and papers of any agent, employee or officer of the city.

25. Messages to council.] § 12. The mayor shall, annually, and from time to time, give the council information relative to the affairs of the city, and shall recommend for their consideration such measures as he may deem expedient.

26. To call out militia, etc.—Riots, etc.] § 13. He shall have power, when necessary, to call on every male inhabitant of the city over the age of 18 years, to aid in enforcing the laws and ordinances, and to call out the militia to aid in suppressing riots and other disorderly conduct, or carrying into effect any law or ordinance, subject to the authority of the governor as commander-in-chief of the militia.

27. Misconduct, etc., of mayor or other officer—Penalty.] § 14. In case the mayor or any other municipal officer shall at any time be guilty of a palpable omission of duty, or shall willfully and corruptly be guilty of oppression, malconduct or misfeasance in the discharge of the duties of his office, he shall be liable to indictment in any court of competent jurisdiction, and, on conviction, shall be fined in a sum not exceeding $1,000; and the court in which such conviction shall be had shall enter an order removing such officer from office. [See "Crim. Code," Rev. Stat. ch. 38, § 208–119.

28. Revising ordinances after change of organization.] § 15. He may appoint, by and with the advise and consent of the city council, immediately after such change of organization, one or more competent persons to prepare and submit to the city council, for their adoption or rejection, an ordinance in revision of the ordinances of such city, and for the government of such city, the compensation of such reviser or revisers to be determined and fixed by the city council and paid out of the city treasury.

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(1) **Where power is expressly conferred by the charter of a city,** on the city council, as that to license the traffic in spirituous liquors, such power cannot be delegated to the mayor of the city by ordinance. *City of Kimmundy* v. *Mahan et al.*, 72 Ill. R., 462.

Functions to be exercised by local public officers cannot, without special authority given by law, be delegated to strangers with power to act in their stead. Where there is a personal trust reposed in such officers, there is no authority of law for delegating that trust to others, *Jackson County* v. *Brush et al*,, 77 Ill. R., 59.

ARTICLE III.

OF THE CITY COUNCIL.

29. Council—how composed.
30. Number of aldermen.
31. Term of office of aldermen.
32. Vacancy.
33. Qualifications of aldermen.
34. Council judge of election and qualification of members.
35. Rules—expulsion—bribery.
36. Quorum—compelling attendance.
37. Meetings.
38. Chairman *pro tem.*
39. Open doors.
40. Journal shall be kept.
41. Yeas and nays—record—vote required.
42. Not rescind vote at special meeting unless, etc.
43. When report laid over.
44. Territorial jurisdiction.
45. Special meetings.
46. Ordinances—appeal—veto.
47. Reconsideration—passing over veto.

29. Council—How composed.] § 1. The city council shall consist of the mayor and aldermen.

30. Number of aldermen.] § 2 The number of aldermen, when not elected by the minority representation plan, shall be as follows: In cities not exceeding three thousand inhabitants, six aldermen; exceeding three thousand, but not exceeding five thousand, eight aldermen; exceeding five thousand and not exceeding ten thousand, ten aldermen; exceeding ten thousand and not exceeding thirty thousand, fourteen aldermen; and two additional aldermen for every twenty thousand inhabitants over thirty thousand: *Provided, however*, that in cities of over 100,000 inhabitants, there shall be elected thirty-six aldermen, and no more. [See § 175.

31. Term of office.] § 3. Aldermen shall hold their office for the term of two-years, and until their successors are elected and qualified.

32. Vacancy.] § 4. If any vacancy shall occur in the office of alderman by death, resignation, removal or otherwise. such vacancy shall be filled by election.

33. Qualifications of aldermen.] § 5. No person shall be eligible to the office of alderman unless he shall be a qualified elector, and reside within the ward for which he is elected, nor shall he be eligible if he is in arrears in the payment of any tax or other

liability due to the city; nor shall he be directly or indirectly interested in any contract whatever to which the city is a party; nor shall he be eligible if he shall have been convicted of malfeasance, bribery or other corrupt practices or crimes; nor shall he be eligible to any office, the salary of which is payable out of the city treasury, if at the time of his appointment he shall be a member of the city council; nor shall any member of the city council at the same time hold any other office under the city government; nor shall be either directly or indirectly, individually, or as a member of a firm, engaged in any business transaction (other than official) with such city, through its mayor or any of its authorized boards, agents or attorneys, whereby any money is to be paid, directly or indirectly, out of the city treasury to such member or firms.

34. Council judge of its members.] § 6. The city council shall be judge of the electionand qualification of its own members.

35. Rules—Expulsion—Bribery.] § 7. It shall determine its own rules of proceeding, punish its members for disorderly conduct, and with the concurrence of two-thirds of the aldermen elect, may expel a member, but not a second time for the same offense: *Provided*, that any alderman or councilman who shall have been convicted of bribery shall thereby be deemed to have vacated his office.(1)

36. Quorum—Compelling attendance.] § 8. A majority of the aldermen elect shall constitute a quorum to do business, but a smaller number may adjourn from time to time, and may compel the attendance of absentees, under such penalties as may be prescribed by ordinance.(2)

37. Meetings.] § 9. The city council may prescribe, by ordinance, the times and places of the meeting thereof, and the manner in which special meetings thereof may be called.(3)

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(1) What is intended by this section is that the council will prepare and adopt a general set of rules governing its proceedings. In the absence of any prescribed rules, the rules of parliamentary law, as generally practiced, would be deemed applicable. In the latter part of this book will be found a set of rules suggested in such cases. See Div. II. *post.* See also general rules of paliamentary law, *post.*

(2) See form of ordinance concerning absentees, Div. II, *post.*

(3) See general form of ordinances suggested concerning council meetings. *post.*

The city council of cities is referred to in our statutes as "the legislative authority of the city." Large powers are granted these bodies by this act, which is sanctioned by the general policy of the statutes, whereby these corporations enjoy the dignity of a law making power, their ordinances having all the force of statutes within their territorial jurisdiction. *Mason* v. *City of Shawneetown*, 77 Ill. R., 533. In their proceedings they are a deliberative body, governed by general parliamentary rules; and the law, as expounded by the courts in regard to the legislature or general assembly of the state, would seem to be generally applicable to a city council, keeping in view this fundamental principle of difference, that in case of the general assembly the constitution operates to a certain extent as a limitation of power, while a city council possesses no power except that which is delegated by the statutes. *Field* v. *The People*, 2 Scam. R., 79; *The People* v. *Solomon*, 51 Ill. R., 49.

38. **Chairman pro tem.**] § 10. It may elect a temporary chairman in the absence of the mayor.

39. **Open doors.**] § 11. It shall sit with open doors.

40. **Journal.**] § 12. It shall keep a journal of its own proceedings.(1)

41. **Yeas and nays—Record—Vote required.**] § 13. The yeas and nays shall be taken upon the passage of all ordinances, and on all propositions to create any liability against the city, or for the expenditure or appropriation of its money, and in all other cases at the request of any member, which shall be entered on the journal of its proceedings; and the concurrence of a majority of all the members elected in the city council shall be necessary to the passage of any such ordinance or proposition: *Provided*, it shall require two-thirds of all the aldermen elect to sell any city or school property.(2)

42. **Not to rescind vote at special meeting, unless, etc.**] § 14. No vote of the city council shall be reconsidered or recinded at a special meeting, unless at such special meeting there be present as large a number of aldermen as were present when such vote was taken.

43. **When report laid over.**] § 15. Any report of a committee of the council shall be deferred for final action thereon, to the next regular meeting of the same after the report is made, upon the request of any two aldermen present.

Where the members of the legislature dispersed and went to their homes and did not again assemble, but the journals contained no record or entry of a formal adjournment, the conduct of the members in this regard was considered as an act of adjournment, and that the session was thereby terminated. An entry on the journals was not necessary under the circumstances to constitute an adjournment. Where it was claimed that the two houses of the general assembly were in session during a certain period thereafter, but the journals during all this time contained no entry of any proceedings whatever, it was considered conclusive that the general assembly were not during that time in session. *The People* v. *Hatch*, 33 Ill. R., 9.

(1) See form of journal of proceedings, Div. II, *post*.

In regard to proceedings in the general assembly of the state it is held that the same legislature which passed a law, may correct its journals at the same or a subsequent session, so as to make the truth appear. *Turley* v. *The County of Logan*, 17 Ill. R., 151.

(2) **Where a bill is signed by the speakers of both houses** of the general assembly, and approved by the governor, it will be presumed to have been passed in conformity with all the requirements of the constitution, and that it is valid until the presumption is overcome by legitimate proof, clear and convincing in its character. *Larrison* v. *Peoria, A. & D. R. R. Co.*, 77 Ill. R., 11.

Where in the general assembly the journals of the senate showed senate bill No. 453 for "An act to incorporate the Peoria, Atlanta and Danville Railroad Company," was introduced, read a first and second time, and referred to a committee; and that the committee to whom was referred senate bill No. 453, for "An act to incorporate the Peoria, Atlanta and Decatur Railroad Company," reported back the same with amendments, and that the same was engrossed for a third reading and finally passed, upon the call of the ayes and noes. *Held* that the proof failed to raise even a doubt of the passage of the bill, and that these entries failed to show that there were two bills pending, of the same number, and that the number showed its identity. *Larrison* v. *Peoria, A. & D. R. R. Co.*, 77 Ill. R., 11.

44. Territorial jurisdiction.] § 16. The city council and board of trustees shall also have jurisdiction in and over all places within one-half mile of the city or village limits, for the purpose of enforcing health and quarantine ordinances and regulations thereof. [See § 71, 170, 215, 216, 229.

45. Special meeting.] § 17. The mayor or any three aldermen may call special meetings of the city council.(1)

46. Ordinances—Approval—Veto.] § 18. All ordinances passed by the city council shall, before they take effect, be deposited in the office of the city clerk; and if the mayor approves thereof, he shall sign the same, and such as he shall not approve he shall return to the council, with his objections thereto, in writing, at the next regular meeting of the council occurring not less than five days after the passage thereof. Such veto may extend to any one or more items or appropriations contained in any ordinance making an appropriation, or to the entire ordinance; and in case the veto only extends to a part of such ordinance, the residue thereof shall take effect and be in force.(2) But in case the mayor shall fail to return any ordinance, with his objections thereto, by the time aforesaid, he shall be deemed to have approved such ordinance, and the same shall take effect accordingly.(3)

47. Reconsideration—Passing over veto.] § 19. Upon the return of any ordinance by the mayor, the vote by which the same was passed shall be reconsidered by the council; and if, after such reconsideration, two-thirds of all the members elected to the city council shall agree, by yeas and nays, to pass the same, it shall go into effect, notwithstanding the mayor may refuse to approve thereof. The vote to pass the same over the mayor's veto shall be taken by yeas and nays, and entered on the journal.(4)

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(1) See form of notice of special meeting of the council, Div. II, *post.*

(2) See form of veto, Div. II, *post.*

(3) **Where the governor fails to return a bill presented to him** by the general assembly, within the ten days prescribed, and refuses to authenticate the same according to the provisions of the statute, the question as to whether it be a law, could properly arise only in a case brought before the court for adjudication, the foundation of which should be the assertion of a right or privilege claimed under and by force of such act, and against one who may have resisted that right. *The People* v. *Hatch*, 33 Ill. R., 9.

The term veto signifies, literally, I forbid: as used in the statutes it relates to the refusal of the executive officer, whose assent is necessary to perfect a law which has been passed by the legislative branch of the government, and the message which is usually sent, stating such refusal and the reasons therefor. The message of the executive in such cases is called a veto message. See Bouv. Law Dict., Title "Veto." The provision of this act, in regard to veto of ordinances by the mayor, is substantiallly the same as that in the constitution of the state in regard to veto of bills by the governor.

(4) **What is meant by reconsideration in the above section** is, again taking the sense of the council on the ordinance. The question being thus, "Shall the ordinance pass, notwithstanding the mayor's objections."

ARTICLE IV.

ELECTIONS.

48. Annual election.
49. Election of mayor.
50. Who entitled to vote.
51. Wards.
52. Aldermen at first election—classified.
53. Minority representation.
54. Aldermen under minority representation.
55. Aldermen when minority plan not adopted.
56. Council to designate place of election—notice.
57. Manner of conducting elections.
58. Result—tie.
59. Notice to persons elected or appointed.
60. Where no quorum in office—special election.
61. Special election.

48. Annual election.] § 1. A general election for city officers shall be held on the third Tuesday of April of each year: *Provided*, that in cities which include wholly within their corporate limits a town or towns, such elections shall be held on the first Tuesday of April. [Amended by act approved and in force March 9, 1877.

49. Election of Mayor, city clerk, attorney and treasurer.] § 2. At the general election held in 1877 and biennially thereafter, a mayor, a city clerk, a city attorney, and a city treasurer shall be elected in each city: *Provided*, that no person shall be elected to the office of city treasurer for two terms in succession. [Amended by act approved and in force March 26, 1877.

50. Who entitled to vote.] § 3. All persons entitled to vote at any general election for state officers within any city or village, having resided therein thirty days next preceding thereto, may vote at any election for city or village officers.(1) See Rev. Stat. "Elections," ch. 46, § 65, 66; Const., art. 7, § 1, p. 73.

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(1) **On the subject of voters at general elections,** the statute concerning elections; Revised Statutes, chapter 46, makes the following provisions:

Rev. Stat., 460. **"Who may vote.** § 65. Every person having resided in this state one year, in the county 90 days, and in the election district 30 days next preceding any election therein, who was an elector in this state on the first day of April, in the year of our Lord 1848, or obtained a certificate of naturalization before any court of record in this state prior to the first day of January, in the year of our Lord 1870, or who shall be a male citizen of the United States, above the age of 21 years, shall be entitled to vote at such election. See Const., Art. 7, § 1, which is in the words of this section.

§ 66. **Residence.** A permanent abode is necessary to constitute a residence within the meaning of the preceding section."

As to the mode of conducting elections, qualification of voters, and the election law generally, see HAINES' TOWNSHIP ORGANIZATION LAWS, Title "Elections," where the election laws of the state will be found in full, together with decisions of the courts relating thereto.

51. Wards.] § 4. The city council may, from time to time, divide the city into one-half as many wards as the total number of aldermen to which the city is entitled; and one alderman shall, annually, be elected in and for each ward, to hold his office for two years, and until his successor is elected and qualified. In the formation of wards, the population of each shall be as nearly equal and the ward shall be of as compact and contiguous territory as practicable.

52. Aldermen at first election—Classified.] § 5. At the first election under this act, there shall be elected the full number of aldermen to which the city shall be entitled. At the first meeting of the city council after such election, the aldermen elected shall be divided, by lot, into two classes: those of the first class shall continue in office for one year, and those of the second for two years. And upon any increase of the number of aldermen at their first election, one-half shall be elected for one year, and one-half for two years.

53. Minority representation.] § 6. Whenever this act shall be submitted to the qualified electors of any city for adoption, there shall be submitted at the same time, for adoption or rejection, the question of minority representation in the city council or legislative authority of such city. At the said election the ballots shall be in the following form: "For minority representation in the city council," or "Against minority representation in the city council." And at any subsequent time, on petition of the legal voters equal in number to one-eighth the number of legal votes cast at the next preceding general city election, the city council shall cause the question of minority representation to be submitted to the legal voters of said city, and the ballots shall be in form as provided in this section: *Provided*, that no such question of representation shall be submitted more than once in every two

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A party who leaves this state without any settled intention of acquiring a residence elsewhere, but only with a conditional intention of so doing, does not lose his residence here so long as that intention remains conditional. *Wilkins* v. *Marshall*, 80 Ill. R., 74.

Where a person votes at an election without having been registered, and without any proof of right, if it does not appear he was challenged, or any objection made to his voting, the presumption must be that he was a legal voter, and so known to the judges of the election. *Dale* v. *Irwin*, 78 Ill. R., 170.

The undergraduates of a college, who are free from parental control, and regard the place where the college is situated as their home, having no other in which to return to in case of sickness or domestic affliction, are as much entitled to vote as any other resident of the town pursuing his usual avocation. *Dale* v. *Irwin*, 78 Ill. R., 170.

The constitution of 1870 does not provide that all persons who at any time became electors by virtue of the constitution of 1848, shall be entitled to vote, or that every person who was or became an elector under that constitution, shall be so entitled. It only authorises those persons to vote who were electors on the first day of April, 1848. Aliens who were minors on that day were not electors, and consequently are not entitled to vote *Beardstown et al.* v *Virginia et al.*, 76 Ill. R., 34.

years. The judges of such elections shall make returns thereof to the city council, whose duty it shall be to canvass such returns, and to cause the result of such canvass to be entered on the records of such city. If a majority of the votes cast at such election shall be "For equal representation in the city council," then the members of the city council or legislative authority of such city shall be thereafter elected in the following manner: The council or legislative authority of such city, at least one month before the general election in the year in which this act shall take effect in such city, shall apportion such city, by dividing the population thereof, as ascertained by the last federal census, by any number not less than two nor more than six, and the quotient shall be the ratio of representation in the city council. Districts shall be formed of contiguous and compact territory, and contain, as nearly as practicable, an equal number of inhabitants.(1) [As amended by act approved March 27, 1874; in force July 1, 1874.

54. Aldermen under minority plan.] § 7. Every such district shall be entiled to three aldermen, who shall hold their office for two years, and until their successors shall be elected and qualified, *Provided*, that those elected at the first election, from the wards bearing odd numbers, shall only hold their office for one year, and until their successors shall be elected and qualified. Vacancies occurring by the expiration of term, shall be filled by the election of aldermen for the full term of two years. Vacancies arising from any other cause than the expiration of term, shall be filled at an election to be held by the voters of the district in which such vacancy shall occur, at the time designated by the city council. In all elections for aldermen, aforesaid, each qualified voter may cast as many votes as there are aldermen to be elected in his district, or may distribute the same or equal parts thereof, among the candidates, as he shall see fit, and the candidate highest in votes shall be declared elected. [As amended by act approved March 27, 1874; in force July 1, 1874.

55. Aldermen when minority plan not adopted.] § 8. If a majority of the votes cast at such election shalll be "Against minority representation in the city council," the preceding section

(1) **In submitting the question of minority represensation** to be voted on at an election to decide upon adopting the general incorporation law, no ordinance of the city council is necessary for that purpose: the statute itself provides for submission of the question. It becomes a question to be voted on at such election by force of the statute. And an election in a city to determine the question of becoming incorporated under the act of 1872, is not invalid on account of the city authorities failing, in the ordinance calling such election and in the notice thereof, to submit, at the same time, the question of minority representation. *Chicago* v. *The People exr el.*, 80 Ill. R., 496.

See form of petition and order of the city council submitting question of minority represen tation at any subsequent time, Div. II, *post.*

shall be null and void, so far as it relates to such city at such election, and the aldermen of such city shall be elected as otherwise provided for in this act.

56. Place of election—Notice.] § 9. The city council shall designate the place or places in which the election shall be held, and appoint the judges and clerks thereof, and cause notice to be printed in some newspaper published in such city, if there be one, or posted at each voting place in such city, of the time, places of election, and of the officers to be elected, for at least twenty days prior to such election.(1)

57. Manner of conducting elections, etc.] § 10. The manner of conducting and voting at elections to be held under this act and contesting the same, the keeping of poll lists and canvassing the votes, shall be the same, as nearly as may be, as in the case of the election of county officers, under the generel laws of this state. The judges of election shall appoint clerks, when necessary to fill vacancies, and the judges and clerks shall take the same oath and have the same powers and authority as the judges and clerks of general state elections. After the closing of the polls, the ballots shall be counted and the return made out and returned, under seal, to the city or village clerk, as the case may be, within two days after the election; and, thereupon, the city council or board of trustees, as the case may be, shall examine and canvass the same and declare the result of the election, and cause a statement thereof to be enteredupon its journals.(2) See Rev. Stat. "Elections," ch. 46, § 48, seq.

58. Result—Tie.] § 11. The person having the highest number of votes, for any office, shall be declared elected. In case of a tie in the election of any city or village officer, it shall be determined by lot, in presence of the city council or board of trustees, in such manner as they shall direct, which candidate or candidates shall hold the office.

59. Notice to persons elected or appointed.] § 12. It shall be the duty of the village or city clerk, within five days after the result of the election is declared or appointment made, to notify all persons elected or appointed to office of their election or appointment, and unless such persons shall respectively qualify in ten days after such notice, the office shall become vacant.(3)

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(1) See forms under the above section, Div. II, *post.*

(2) See HAINES' TOWNSHIP ORGANIZATION LAWS. Title "Elections."
See forms of canvass of votes and entry on the journals, Div. II. *post.*
A numbered ballot should not be rejected in counting the votes at an election, merely because an unnumbered ballot is found folded within the same. *Dale* v. *Irwin*, 78 Ill. R, 170.

(3) See form of notice to persons elected, Div. II, *post.*

60. When no quorum in office—Special election.] § 13. If, for any cause, there shall not be a quorum in office of the city council or board of trustees, the mayor, clerk, or any alderman or trustee, as the case may be, may appoint the time and place for holding a special election to supply such vacancy and give notice and appoint the judges thereof.(1)

61. Special elections.] § 14. If there is a failure to elect any officer herein required to be elected, or the person elected should fail to qualify, the city council or board of trustees may forthwith order a new election therefor; and in all cases, when necessary for the purposes of this act, may call special elections, appoint judges and clerks thereof, canvass the returns thereof, and provide by ordinance for the mode of conducting the same; and shall give notice of such special elections, in which shall be stated the questions to be voted upon, and cause such notices to be published or posted for the same length of time and in the same manner as is required in the case of regular annual elections in such cities or villages.(2)

ARTICLE V.

OF THE POWERS OF THE CITY COUNCIL.

62. General powers of the city council.
63. Style of ordinances.
64. Publication of ordinances—when they take effect.
65. Proof of ordinances.
66. Suits for violating ordinances.
67. Fines and licenses paid to treasurer.
68. Summons—affidavit—punishment.
69. Jurisdiction of justices, etc.
70. Constables and sheriffs may serve process, etc.
71. Jurisdiction over water.

62. Powers.] § 1. The city council in cities, and president and the board of trustees in villages, shall have the following powers:(3)

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(1) **The provision of the above section** is intended to apply to cases where the council or board of trustees is reduced by vacancies so that there are not members enough in office to make the number necessary for a quorum, whereby a legal meeting can be held so as to order an election. In that case the mayor may call a special election. If that office is vacant, then the clerk should act. If both mayor and clerk are vacant then any alderman or trustee should act. The law seems to contemplate action in the foregoing order. If, however, the officers first named refuse to act, any of them last named have authority to do so.

See form of notice of special election by mayor, clerk, alderman or trustee, Div. II, *post*.

(2) See forms for order of new election and forms for special election, Div. II, *post*.

(3) **Any acts a city council may assume to perform** not fairly within the powers conferred on it by statute, are void. *City of Alton* v. *Aetna Insurance Co.*, 82 Ill. R., 45.

First—**Finances.**] To control the finances and property of the corporation.

Municipal corporations when empowered to enter into trade or enterprise of a private business character, there are no presumptions in favor of such acts, but in their performance it must appear that the law has been strictly complied with, before the performance of such acts will be enforced by law. *S. & I. S. E. Ry. Co.* v. *Cold Spring Tp.*, 72 Ill. R., 603,

The members of a village council who are also made a board of education by special provision, can only exercise powers conferred expressly or by implication. They may do such things as effectuate the purposes of the creation of their body, but they have not an unlimited discretion, but must look to the law creating the office for their warrant in all they do officially. *Sherlock* v. *Village of Winnetka*, 68 Ill. R., 531.

The legislative power of the state is vested by the constitution in the general assembly, and ordinarily it cannot be delegated. But the right of the legislature to empower municipal corporations to make by laws and ordinances for the welfare and government of the inhabitants of the corporation can not be denied. *Tugman* v. *City of Chicago*, 78 Ill. R., 405.

The general assembly has power to delegate legislative authority incident to municipal governments to cities; but this can only be done by general law under the constitution of 1870. When, however, it is done by such law, the constitutional mandate is fully complied with, and the ordinance to be adopted by different municipalities, under the power so conferred, may be as variant in their terms as the varying municipal necessities, or sense of public policy in those who exercise the legislative authority may require. *Covington* v. *City of East St. Louis*, 78 Ill. R., 548.

Where the power to make by-laws and ordinances for the welfare and government of the inhabitants is given to a city by the legislature, it is exercised by a body elected by the people affected; but if the legislature possesses the power to delegate legislative authority to a body to be appointed by some judicial officer of the state, the people of the corporation might be deprived of self-government; they would be governed by a body they had no voice in electing, which is repugnant to our theory of governments. *Tugman* v. *City of Chicago*, 78 Ill. R., 405.

So far as franchises of a corporation concern the public, the state may properly legislate touching them, and such legislation is not prohibited by that clause of the constitution of the United States, which forbids the passage of laws impairing the obligation of contract. *Lake View* v. *Rose Hill Cem. Co.*, 70 Ill. R., 191.

Public or municipal corporations existing only for public purposes, possessing only such powers as are granted to them, are subject at all times to the control of the legislature. *County of Richland* v. *County of Lawrence*, 12 Ill. R., 1; *City of Springfield* v. *Power*, 25 Ill. R., 190.

The essential object in the creation of municipal corporations, is a better and more thorough system of police regulations for the benefit of the inhabitants therein. The exercise of the police power is subject to constitutional limitations. It is essential that police regulations must have reference to the comfort, safety and welfare of society, when applied to corporations, they must not be in conflict with any of the provisions of their charters. Under the pretense of police regulations, a corporation can not be divested of any of the essential rights and privileges conferred by its charter. *Lake View* v. *Rose Hill Cem. Co.*, 70 Ill. R., 191.

The police power of the state is coextensive with self protection, and is not inaptly termed "the law of overruling necessity." It is that inherent and plenary power in the state which enables it to prohibit all things hurtful to the comfort, safety and welfare of society. It may be exercised to control the use of property of corporations, as well as of private individuals. *Lake View* v. *Rose Hill Cem. Co.*, 70 Ill. R., 191.

It is the province of the law making power, as a general proposition, to determine when exigency exists, calling into exercise the police power of the state, but what are the subjects of its exercise, is clearly a judicial question. *Lake View* v. *Rose Hill Cem. Co.*, 70 Ill. R., 191.

Whether certain requirements belong to a system of police regulation adopted to aid in the protection of life and health, is properly one of legislative determination, and a court should not lightly interfere with such determination, unless the legislature has manifestly transcended its province. *Daniels* v. *Hilgard*, 77 Ill. R., 640.

All regulations of trade, with a view to the public interests, may more or less impair the value of property, but they do not come within the constitutional inhibition, unless they virtually take away and destroy those rights in which property consists, and the destruction must be, for all substantial purposes, total. *Munn* v. *The People*, 69 Ill. R., 80.

Generally judicial tribunals will not interfere with municipal corporations in their internal police and administrative government, unless some clear right has been withheld or wrong perpetrated. Under this rule it is the province of the municipal authorities and not of the judicial tribunals to determine what improvements shall be made in the streets and highways of the corporation. Dillon on Mun. Corp., § 59.

Second—**Appropriate money.**] To appropriate money for corporate purposes only, and provide for payment of debts and expenses of the corporation.(1)

Third—**Levy taxes.**] To levy and collect taxes for general and special purposes on real and personal property. [See § 89, 171, 227, 231-236, 240-269.

Fourth—**Licenses.**] To fix the amount, terms and manner of issuing and revoking licenses.(2)

Fifth—**Borrow money.**] To borrow money on the credit of the corporation for corporate purposes, and issue bonds therefor, in such amounts and form, and on such conditions as it shall prescribe, but shall not become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate to exceed five (5) per centum on the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness; and before or at the time of incurring any indebtedness, shall provide for the collection of a direct annual tax sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal thereof within twenty years after contracting the same.(3) [See § 90, 169, 228, 245.

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(1) **A tax for corporate purposes** is a tax to be expended in a manner which shall promote the general prosperity and welfare of the municipality which levies it. *Livingston County* v. *Weider*, 64 Ill. R., 427.

A public festival, as a Fourth of July celebration, is not a corporate purpose, and a municipal corporation has no authority to appropriate money therefor. *Hood* v. *Lynn*, 1 Allen R., 103; *New London* v. *Brainard*, 22 Conn. R., 552. And, an unlawful expenditure of money by a town cannot be rendered valid by usage, however long continued. Dillon on Mun. Corp., § 57.

Under the constitution of 1848, the legislature had no power to authorize a municipal corporation to levy a tax to provide a location or site for a state institution. *Livingston County* v. *Weider*., 64 Ill. R., 427. Under the constitution of 1870, municipal corporations are authorized to levy taxes only for municipal purposes. Const., Art, IX, § 9.

On the subject of taxes for corporate purposes see § 111, *post.*

(2) **Concerning the power of granting license.** When the power is conferred upon a municipal corporation to regulate any calling or business, the power must be exercised by the corporation in the manner prescribed, and the corporation cannot delegate the authority to exercise such discretionary power to others. The amount to be paid for a license must be fixed by the corporation; it cannot be left to the discretion of an individual. *East St. Louis* v. *Wehrung*, 50 Ill. R., 29.

The amount fixed by the corporation to be paid as a license for the carrying on any calling or business, is not a tax, requiring uniformity. *Ducat* v. *Chicago*, 48 Ill. R., 172.

A license to carry on a business is a personal privilege, and not assignable. *Munsill* v. *Temple*, 3 Gilm. R., 93.

(3) **Concerning municipal taxation and indebtedness the constitution** has made the following provisions, set forth in Art. IX:

§ 9. The general assembly may vest the corporate authorities of cities, towns and villages with power to make local improvements by special assessment, or by special taxation of contiguous property, or otherwise. For all other corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes; but such taxes shall be uniform in respect to persons and property, within the jurisdiction of the body imposing the same.

§ 10. The general assembly shall not impose taxes upon municipal corporations, or the inhabitants or property thereof, for corporate purposes, but shall require that all the taxable property

Sixth—**Issue bonds.**] To issue bonds in place of or to supply means to meet maturing bonds. or for the consolidation or funding of the same.

within the limits of municipal corporations shall be taxed for the payment of debts contracted under authority of law, such taxes to be uniform in respect to persons and property, within the jurisdiction of the body imposing the same. Private property shall not be liable to be taken or sold for the payment of the corporate debts of a municipal corporation.

"§ 12. No county, city, township, school district or other municipal corporation, shall be allowed to become indebted in any manner or for any purpose, to an amount, including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes, previous to the incurring of such indebtedness. Any county, city, school district or other municipal corporation, incurring any indebtedness as aforesaid shall before, or at the time of doing so, provide for the collection of a direct annual tax sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal thereof within twenty years from the time of contracting the same. This section shall not be construed to prevent any county, city, township, school district, or other municipal corporation, from issuing their bonds in compliance with any vote of the people which may have been had prior to the adoption of this constitution in pursuance of any law providing therefor."

Municipal Subscriptions to railroads or private corporations. Under this head the constitution, in a separate section, makes the following further provision, limiting the authority of municipal corporations:

"No county, city, town, township or other municipality, shall ever become subscriber to the capital stock of any railroad or private corporation, or make donation to or loan its credit in aid of such corporation: *Provided, however*, that the adoption of this article shall not be construed as affecting the right of any such municipality to make such subscriptions where the same have been authorized, under existing laws, by a vote of the people of such municipalities prior to such adoption."

The separate articles of the constitution of 1870, including that prohibiting municipal aid to railroads or other private corporations, having been submitted to a vote of the people separately from the main body of the constitution, and adopted, became a part of the organic law of the state from and after the second day of July, 1870, and a constituent part of the same *ipso facto* and *eo instant*, no matter what became of the new constitution itself. *Schall* v. *Bowman*, 62 Ill. R., 321; *Richards* v. *Donaghe*, 66 Ill. R., 73.

The fact that a part of the indebtedness contracted by a municipal corporation for a certain purpose is within the constitutional limit will not legalize that portion of it which is in excess of the limit; but the indebtedness will be valid to the extent to which the corporation is allowed to contract. *McPherson* v. *Foster*, 43 Iowa R., 48.

The legislature cannot compel a municipal corporation to incur a debt for merely local purposes against its own wishes. And where there is a void vote for the issuing of its corporate bonds in aid of a railway, and which therefore imposes no liability on the corporation, it is not within the power of the legislature to validate such vote so as to compel the issue of the bonds voted. Under such a law the body might issue its bonds, if it so desired, but cannot be compelled to do so. *Cairo & St. Louis R. R. Co.* v. *City of Sparta*, 77 Ill. R., 505.

Where bonds are issued by municipal authorities upon conditions, a vote thereon being had, and the vote being against the issuing of the bonds, there was no power to compel their issue. *S. & I. S. E. Ry. Co.* v. *Cold Spring Tp.*, 72 Ill. R., 603.

The saving clause of the constitution, by a reasonable construction of the section which prohibits donations and subscriptions by municipal corporations in aid of any railroad or private corporation, embraces donations as well as subscriptions voted prior to the adoption of the constitution. *Chicago & Iowa R. R. Co.* v. *Pickney*, 74 Ill. R., 277.

A city being authorized to issue bonds, may, without express authority, issue bonds in lieu of others over due. *Quincy* v. *Warfield*, 25 Ill. R., 317.

Where the charter to a town prohibited the trustees from borrowing money unless authorized by vote of its citizens, and they directed a street commissioner to open a street, and in doing so he borrowed money from a party at different times, the trustees afterwards issued orders on the treasury for the amount, and suit being brought for the amount due on them: *Held*, that the orders were issued in violation of law, and were void, as the transaction was, in substance, borrowing money without a vote of the citizens of the town. *President and Trustees of Lockport* v. *Gaylord*, 61 Ill. R., 276.

Where a city was authorized by its charter to issue its bonds for the purpose of constructing a levee, but the charter was silent as to the manner of the exercise of this power, and did not require any vote of the people to be had as a condition to its exercise, and the city council was empowered to make all ordinances necessary to carry out the various provisions of the charter, it was *held*, that a vote had under an ordinance duly passed upon the question of

Seventh—**Streets.** To lay out, establish, open, alter, widen, extend, grade, pave or otherwise improve streets, alleys, avenues, sidewalks, wharves, parks and public grounds, and vacate the same.(1) [See Rev. Stat., "Plats," ch. 109, § 1–10.

issuing city bonds for levee purposes, prior to the adoption of the prerent constitution, must be regarded as had in pursuance of law, within the meaning of the proviso to section 12, of article 9, of the constitution, and that under such vote, taken prior to the adoption of the constitution, the city was authorized to issue its bonds notwithstanding it, in connection with prior debts, created a corparate indebtedness, exceeding five per centum on the value of the taxable property of the city. *Mason* v. *Shawneetown*, 77 Ill. R., 533.

Municipal corporations, being created for governmental purposes, where they exercise the function of subscribing in aid of railways under statutes, the power to do so must not only be clearly conferred, but strictly pursued. *Harding* v. *R. R. & St. Louis R. R. Co.*, 65 Ill. R., 90.

And where the charter of a town prohibits the borrowing of money unless by a vote of the citizens, the power given must be strictly pursued, *Village of Lockport* v. *Gaylord*. 61 Ill. R., 276.

Where bonds are issued to a railroad company in aid thereof, and where the conditions are that the company shall make a permanent location of the road by a certain route, it was held that this was an indispensable prerequisite to the delivery of the bonds, and if the railroad company changed its road to a materially different location, it could have no claim for the bonds. *Alley et al.* v. *Adams County*, 76 Ill. R., 103.

A bond of a municipal corporation bearing a greater rate of interest than is allowed by law, is not vitiated by such excess of interest, but the bond will be held good at a legal rate of interest, and only the excess will be rejected. *Quincy* v. *Warfield*, 25 Ill. R., 317.

Municipal authorities, in the absence of express authority, have no right to make their bonds, issued by them, payable at any other place than their treasury; but if they are made payable at some other place, this will not invalidate the bonds, the provision to pay at some other place being void. The bond is payable at the village treasury. The place of payment in the bond otherwise will be rejected. *The People ex rel.* v. *Tazewell Co.*, 22 Ill. R., 147; *Johnson* v. *Stark Co.*, 24 Ill. R., 75; *Sherlock* v. *Village of Winnetka*, 68 Ill. R., 531.

Bonds issued and sold by a board of education of a school district, or the purpose of building a dormitory and boarding house, being buildings that were in no sense proper or necessary for a public free school, and not authorized by law, are illegal, and no power exists to levy taxes to pay the interest on the same. *Sherlock* v. *Village of Winnetka*, 68 Ill. R., 531.

Bonds issued by a town without any power or authority in law authorizing them to be issued, are absolutely void; but if the legal power to issue them existed, but was defectively or irregularly executed, they are only voidable, and an innocent and *bona fide* holder would be entitled to collect them. *Ryan* v. *Lynch*, 68 Ill. R., 160.

Bonds issued by a municipal corporation not for a corporate purpose, are illegal, and there can be no innocent holders, and no tax can be rightfully levied to provide for their payment. *Livingston County* v. *Weider*, 64 Ill. R., 427

A member of a village council has no power to purchase the bonds of the corporation he represents, at any sale made by himself, or by the body of which he is a member, and if he does, a tax levied to pay interest on the same may be enjoined at the suit of the tax payer. *Sherlock* v. *Village of Winnetka*, 68 Ill. R., 530.

(1) EMINENT DOMAIN.—PUBLIC IMPROVEMENTS.

The right of municipal corporations to take private property for streets or other public purposes, exists under what is called *eminent domain*, which is the superior right of the public over and above private interests. On this subject the bill of rights in the constitution has declared, Art. II

§ 13. "Private property shall not be taken or damaged for public use without just compensation. Such compensation, when not made by the state, shall be ascertained by a jury, as shall be prescribed by law."

A general law has been provided for taking property for public use, under the above secti of the constitution, Rev. Stat., chap, 47, Title "EMINENT DOMAIN."

The 13th section of the bill of rights of the constitution, 1870, is not merely prospective in its effect, but operated *in presenti*, without legislative action. Said section provides that private property shall not be taken or damaged for public use without just compensation, and that such compensation, when not made by the state, shall be ascertained by a jury, as shall be prescribed by law. The compensation for property damaged, as well as taken, must be ascertained by a jury. It can neither be damaged nor taken without compensation; and there can be no entrance upon or possession of land for public use until the compensation for the land damaged, as well as taken, has been paid. *The People ex rel., etc.*, v. *McRoberts*, 62 Ill. R., 38.

Eighth—**Trees.**] To plant trees upon the same.

In the absence of express provision by charter or statute, a municipal corporation is not liable to property owners for the consequential damages necessarily resulting from either establishing a grade, or changing an established grade of streets, although improvements were made in conformity of the first grade. Dillon on Mun. Corp., § 543, and cases cited.

The constitution of Illinois declares that "Private property shall not be taken or damaged for public use without just compensation." Const., Art. II, § 13.

The damages contemplated by the constitution where property is not taken for the use of a railway company, must be actual, real and present damage to the property. *Eberhart* v *Chic. Mil. & St. P. Ry. Co.*, 70 Ill. R., 347.

Under the constitution, the full value of land taken for a public highway must be paid in money alone, disregarding all benefits and advantages that may result to that portion of the owner's land not taken, by reason of the establishing of the road; and it is not in the power of the legislature to provide otherwise. *Carpenter* v. *Jennings*, 77 Ill. R., 250.

But the clause of the constitution which provides that "Private property shall not be taken or damaged for public use, without just compensation," must receive a reasonable and practicable interpretation. When the property is not taken the damages must not be speculative, but real. If the property is not worth less in consequence of the construction of a railroad in its vicinity, or upon a street upon which the lots abut, than if no road were constructed, the owner will not be entitled to damages, and cannot enjoin the construction of the road in the street in pursuance of the company's charter and the license of the city authorities. *C. P. & R. I. R. R. Co.* v. *Francis*, 70 Ill. R., 238.

The words, in the act relating to eminent domain, "which may damage property not actually taken," relate to contiguous lands of the same owner, a part of which only are taken, so that where the party seeking condemnation has not embraced all the owner's contiguous lands not actually taken, but damaged, the owner may file a cross petition, and have the damages to the other lands assessed. But even in that case the damages must be direct and physical, and result from the taking of a portion of his land. *Stetson* v. *The Chicago & Evanston Ry. Co.*, 75 Ill. R, 74.

A proceeding to condemn land for right of way, being an extraordinary and summary remedy, the party exercising the power must strictly observe all the requirements of the statute under which he acts. *Chicago & Alton R. R. Co.* v. *Smith*, 78 Ill. R., 96.

Where land was taken by right of eminent domain, and the proceeding commenced, to have compensation ascertained before the act of 1872, on that subject, went into effect; *Held*, that the compensation should be ascertained under the law in force at the time the proceedings were begun. *Emmerson* v. *The Western Union R. R. Co.*, 75 Ill. R., 176.

The property sought to be taken for a public street by a town authorized to do so, belonged to a corporation which acquired its title by the exercise of the rights of eminent domain: *Held*, that such fact does not affect right to take it. There is no distinction in the exercise of this right between the property of individuals and of chartered corporations, or between rights acquired to land by a corporation, and title held by the citizen under letters patent. The same great law of public necessity applies to both. *C. R. I. & P. R. R. Co.* v. *Town of Lake*, 71 Ill. R. 333.

If the use for which private property is proposed to be taken is public, or if it be so doubtful that the courts cannot pronounce it not to be such as to justify the compulsory taking, the decision of the legislature, embodied in the enactment giving, the power that a necessity exists to take the property, is final and conclusive. *C. R. I. & P. R. R. Co.* v. *Town of Lake*, 71 Ill. R., 333.

Courts have the right to determine whether the use private property is proposed to be taken and appropriated for, is public in its nature or not; but when the use is public, the judiciary cannot enquire into the necessity or propriety of exercising the right of eminent domain; the right is political in its nature; to determine when it is needful to excercise it, belongs to the legislative branch of the government. *C. R. I. & P. R. R. Co.* v *Town of Lake*, 71 Ill. R., 333.

Where public authorities take legal steps to widen a street and appoint commissioners to assess damages, etc., this will be an admission that will estop them from claiming a prior dedication. *Town of Princeton* v. *Templeton*. 71 Ill. R., 68.

Ordinances authorizing summary proceedings for appraisement of damages, without judicial ascertainment, are unconstitutional. *Poppen* v. *Holmes*, 44 Ill. R., 360; *Bullock* v. *Geomble*, 45 Ill. R., 218.

TOWN PLATS—DEDICATION.

The right to streets or public grounds may exist by dedication, by laying out and recording a plat showing such intention. On this subject, chap. 109 of the Revised Statutes, makes the following provision:

Rev. Stat., 771. **"Dedication—Effect of.]** § 3. The acknowledgment and recording of such plat shall be held in law and in equity to be a conveyance in fee simple of such portions of

Ninth—**Use of streets.**] To regulate the use of the same.

the premises platted as are marked or noted on such plat as donated or granted to the public, or any person, religious society, corporation or body politic, and as a general warranty against the donor, his heirs and representatives to such donee or grantee for their use or for the use and purposes therein named or intended, and for no other use or purpose. And the premises intended for any street, alley, way, common or other public use in any city, village or town, or addition thereto, shall be held in the corporate name hereof in trust to and for the uses and purposes set forth or intended."

Where a plat is executed, certified, acknowledged and recorded in conformity with the provisions of the statute of 1845, in relation to laying out towns, additions and subdivisions of lots, the fee of all that portion of land designated as streets and alleys, becomes absolutely vested in the corporation of the town or city, in trust for the use of the public. If the plat is recorded before the town has a corporate existence, the fee remains in abeyance, subject to vest in the corporation as soon as created. Making and recording the plat operates as a grant of the fee to the municipality as effectually as would a deed. *Gebhardt* v. *Reeves*, 75 Ill. R., 301.

The Revised Statute of 1874, on the subject involved in the foregoing case, is substantially the same as that of 1845.

But in the case of an ordinary highway or where a town or city obtains a street or alley by dedication merely, or by condemnation, or in any mode except by what is equivalent to a conveyance, an easement only is acquired, and the fee remains in the original proprietor. *Gebhart* v. *Reeves*, 75 Ill. R., 301.

When a street or highway is acquired by dedication or user the fee will remain in the original proprietor, burdened with the public easement. *I. B. & W. R. R. Co.* v. *Hartley*, 67 Ill. R., 440.

As an incorporated city or town holds the title to its streets and alleys for the use of the public, it has no rightful authority to grant them for any purpose inconsistent with the public use. *City of Quincy* v. *Jones et al.*, 76 Ill. R., 231; *Carter* v. *City of Chicago*, 57 Ill. R., 283.

Where the plot of a town contained a block marked "Public Grounds," and there is no incorporation of the town, the power of directing what public use shall be made of such public ground devolves upon the legislature, as the representatives of the whole people. *C. R. I. & P. R. R. Co.* v. *City of Joliet*, 79 Ill. R., 25.

STREETS AND ALLEYS.

Where a street or alley, the fee of which has passed to the corporation by making and recording of a plat, is vacated by the corporate authorities, and its use abandoned, the fee that was in the city or town will revert to the original owner who dedicated the same, and not to the abutting lot owner, and neither the legislature nor the corporate authorities can divest such owner of it. *Gebhardt* v. *Reeves*, 75 Ill. R., 301; *St. John* v. *Quitzow*, 72 Ill. R., 334.

A party laying out land into lots and streets has the right to locate the streets where he sees proper, and when parties have acquired rights of over twenty years standing, the city and the purchasers of the lots are bound by monuments as erected by the surveyor. *Lull* v. *City of Chicago*, 68 Ill. R., 518.

Where land is laid out in lots and blocks, and a strip of land in front of the lots to public for a street, reserving however, a space between the lots and the street for court yards, the city authorities have no power to appropriate such portion dedicated as a street, for a roadway merely, so as to deprive the owners of lots on one side of the street and fronting thereon, of a sidewalk between the court yards thus reserved and the roadway proper. *Carter* v. *City of Chicago et al.*, 57 Ill. R., 283.

Where the owner of land abutting on a public street subdivided the same into lots, and between the street and the lots, as marked on the plat, there was a strip of land separated from the street by a dotted line. *Held*, this was not a dedication of the gore to the public as a part of the street. To constitute a dedication, there must be an intention to make the gift, and an acceptance by the public. *Town of Princeton* v. *Templeton et al.*, 71 Ill. R., 68.

Where the owner of property which is platted in lots and streets sells a lot, and reserves the right to vacate the streets, it is a reservation of all his title thereto, and the purchaser of the lot will not acquire title to any part of the street on which it abuts, in case it is afterwards vacated. *St. John* v. *Quitzow*, 72 Ill. R., 334.

KEEPING IN REPAIR AND IMPROVING STREETS.

Where the charter of a city gives the city council full power to keep in repair the streets, and to provide for keeping them in repair, and to prohibit obstruction therein. This is power to be exercised for the public benefit, and its execution can be insisted on as a duty. And a writ of mandamus is an appropriate proceeding to compel them to act. *People ex rel.* v. *City of Bloomington*, 63 Ill. R., 207.

A city has such control over the streets and alleys within its limits, that the township authorities cannot levy a tax upon its citizens for the building of a bridge within the city limits. *Ottawa* v. *Walker et al.*, 21 Ill. R., 605; *Commissioners etc.* v. *Baumgarten*, 41 Ill. R., 254.

Tenth—**Encroachments.**]—To prevent and remove encroachments or obstructions upon the same.

City authorities have usually exclusive control over the streets and alleys within the corporation, and may allow railroad tracks to be constructed therein. *Murphy* v. *Chicago*, 29 Ill. R., 279; *Moses et al.* v. *P. F. W. & C. R. R. Co.*, 21 Ill. R., 516. But they must not so use them as to injure the property of another, or the city will be liable in damages therefor. *Nevins* v. *Peoria*, 41 Ill. R., 502.

The power to regulate streets and sidewalks, by a municipal corporation, includes the power to determine the width of each, unless limited by statute. *State* v. *Morristown*, 33 N. J. Law, 57; Dillon on Mun. Corp., § 538.

Municipal corporations hold the streets in trust for the public, and may regulate and establish their grade, but this must be done so as to do no injury to the owners of abutting lots. *City of Dixon* v. *Baker*, 65 Ill. R., 518.

Corporate authorities are vested with power to grade their streets, yet the private rights of persons must be regarded, and the mode in which the power is to be exercised, is limited in the same way and to the same extent as the power of a private person in the use of his property, unless the city calls to its aid the right of eminent domain, to be exercised on making compensation. *City of Pekin* v. *Brereton*, 67 Ill. R., 479.

Municipal corporations have the undoubted right to alter the grades of streets at discretion, and if this is done with reasonable care, no liability arises from their acts. But if through negligence or unskillfulness of its agents damages occur, the corporation will be held liable. *Roberts* v. *Chicago*, 26 Ill. R., 249; *Murphy* v. *Chicago*, 29 Ill. R., 279; *Nevins* v. *Peoria*, 41 Ill. R., 502.

A city may lower or elevate the grade of its streets, when done in good faith, with a view to fit them for use as streets, and cannot be held responsible for errors of judgment in that respect, or made liable for the inconvenience and expense of adjusting the adjacent property to the grade of the street changed. But if a city, in changing the grade of a street, changes the grade for another purpose than that of improving the street, it is liable for damages caused to owners of property damaged. *City of Shawneetown* v. *Mason*, 82 Ill. R., 337.

The municipal authorities of cities and villages are the exclusive judges of the propriety and necessity of the widening or laying out of a street within their corporate limits, and, unless there is manifest injustice, oppression or gross abuse of power in their action, a court of equity will not interfere with the exercise of the discretion vested in them. *Dunham* v. *Village of Hyde Park*, 75 Ill. R., 371.

If town authorities accept a deed of land for widening a street on condition that a street or a portion thereof shall be altered, if not, the land to revert, and the change is not made, they will be estopped to claim the land, unless they can show that they have acquired the same in another mode. *Town of Princeton* v. *Templeton*, 71 Ill. R., 68.

A city incorporated under the general law has a large discretion as to the opening, grading and repairing of streets and sidewalks, in respect to the manner and cost of the same, in the exercise of which its power will not be controlled by the courts, unless there is great abuse operating oppressively upon individuals. *Brush* v. *City of Carbondale*, 78 Ill. R., 74.

Public or municipal authorities may when necessary cut down trees, dig up the earth, and may use it in improving the streets or elsewhere, and may make culverts, drains, and sewers upon or under the surface. Whether the municipal corporation holds the fee of the street or not, the true doctrine is that the municipal authorities may, under the usual powers given them, do all acts appropriate or incidental to the beneficial use of the street by the public, of which when not done in an improper and negligent manner, the adjoining fee holder cannot complain. Dillon on Mun. Corp., § 544, and cases cited.

A city is liable in damages for not keeping its streets and sidewalks in repair. *Scammon et al.* v. *Chicago*, 25 Ill. R., 424; *Browning* v. *Springfield*, 17 Ill. R., 143; *Chicago* v. *Major*, 18 Ill. R., 349; *Joliet* v. *Verley*, 35 Ill. R., 58; *Bloomington* v. *Bay*, 42 Ill. R., 507; *Chicago* v. *Powers*, 42 Ill. R., 169; *Champaign* v. *Patterson*, 50 Ill. R., 61.

A municipal corporation is not liable for exemplary damages in cases of neglect to keep its streets in repair. *Chicago* v. *Martin et ux.*, 49 Ill. R., 241. It will be liable only for compensatory damages in such cases. *Decatur* v. *Fisher*, 53 Ill. R., 407.

INJURIES—LIABILITY FOR DAMAGES.

A municipal corporation cannot be held liable for every accident that may happen. Where the public convenience may require a street shall be opened, such corporations are invested with discretionary power, and they cannot be held liable for simply failing to use this discretionary power; and they have a discretion as to when they will make improvements on unfrequented streets, and are not liable for every accident that may occur for want of such repairs. *City of Aurora* v. *Pulfer*, 56 Ill. R., 271.

When a municipal corporation is the projector and builder of a sidewalk, it will be held in law to have a knowledge of its original condition. *Alexander* v. *Town of Mt. Sterling*, 71 Ill. R., 366.

Eleventh—**Lighting.**] To provide for the lighting of the same.(1)

Twelfth—**Cleansing.**] To provide for the cleansing of the same.

Thirteenth—**Pipes, Sewers.**] To regulate the openings therein for the laying of gas or water mains and pipes, and the building and repairing of sewers, tunnels and drains, and erecting gas lights: *Provided, however,* that any company heretofore organized under the general laws of this state, or any association of persons organized, or which may be hereafter organized for the purpose of manufacturing illuminating gas to supply cities or villages, or the inhabitants thereof, with the same, shall have the right, by consent of the common council (subject to existing rights), to erect gas factories, and lay down pipes in the streets or alleys of any city or village in this state, subject to such regulations as any such city or village may by ordinance impose.(2)

Where the sidewalk of a city is out of repair, and remains so for a considerable time, actual notice will be presumed. *City of Springfield* v. *Doyle*, 76 Ill. R., 202.

In exercising its power of changing the grade of its streets, if a city fails to exercise prudence and skill, it will be liable for all damages that result from such action; as when water is thereby carried on to an adjoining lot which does not naturally flow off. *Bloomington* v. *Brokaw et al.*, 77 Ill. R., 194.

A city is liable when the grade of a street has been elevated by its authority and wherby surface water was caused to flow into the basement of a house, whereby it was injured, where it appeared that the injury might have been prevented by proper sewerage. *City of Dixon* v. *Baker*, 65 Ill. R., 518.

A city is liable when it suffers a gutter in the street, which it had constructed, to get out of repair, so that the water which should have been carried off, was thrown upon the lots of an individual near by, and such person's building is damaged in consequence of the flooding of the lots, the city would be liable for the damages so caused. *City of Alton* v. *Hope*, 68 Ill. R., 167.

A city is not required to have its sidewalks so constructed as to secure immunity from danger in using them, nor is it bound to employ the utmost care and exertion to that end. Its duty under the law, is only to see that its sidewalks are reasonably safe for persons exercising ordinary care and caution. The mere slipperiness of a sidewalk, occasioned by ice or snow, not being accumulated so as to constitute an obstruction, is not such a defect as will make the city liable for damages occasioned thereby. *City of Chicago* v. *McGiven*, 78 Ill. R., 347.

In an action against a city where special damages are claimed, the facts upon which the damages are based should be set out in the declaration. *City of Chicago* v. *O'Brennan*, 65 Ill. R., 160.

(1) **A general grant of power to a city for lighting it with gas,** while it carries with it, by implication, all such powers as are clearly necessary for the proper and convenient exercise of the authority expressly conferred, does not authorize the city council to grant to any person or corporation an exclusive right to use the streets of the city for the purpose of laying down gas pipes for a term of years, and thereafter, until the works shall be purchased from the grantee by the city. The court admitted the power to light the city would authorize the council to contract for gas, and to grant the contracting party the use of the streets, but denied its authority to make such use exclusive for a determinate future period. Dillon on Mun. Corp., § 547, and cases cited.

The failure of a city to avail itself of a power to light its streets, can not be regarded as an act of negligence, in an action brought by a person who receives injury by falling into an excavation in the sidewalk or street in the night time. *City of Freeport* v. *Isbell*, 83 Ill. R., 440

(2) **The right to the use of the public streets of a city** by a gas company for the purpose of laying down its pipes, is considered in this country a franchise which can be granted only by the legislature, or some local or municipal authority empowered to confer it. Dillon on Mun. Corp., § 546, and authorities cited.

The use of streets for the purpose of laying down water pipes, stands upon the same principles as their use for sewers or gas pipes. Where the charter gives to the city, in terms the power to supply or authorize the inhabitants to be supplied with water, the municipal coun-

Fourteenth—**Sidewalks.**] To regulate the use of sidewalks and all structures thereunder; and to require the owner or occupant of any premises to keep the sidewalks in front of. or along the same, free from snow and other obstructions.(1)

Fifteenth—**Ashes, Garbage.**] To regulate and prevent the throwing or depositing of ashes, offal. dirt. garbage or any offensive

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cil may use, or, as an incidental power may permit the contractor to use the streets for this purpose, and the adjoining fee holder is not entitled to compensation as for a new servitude, for it is not such, but only a proper or necessary use incident to a street in a populous place. Dillon on Mun. Corp., § 551.

A city has the right to construct sewers in its streets, yet in doing so it has no right to leave piles of dirt upon the street in such a condition as to render it unsafe for wagons to pass. It is bound to take notice of the work and the character thereof done on its streets, and will be liable in damages to any person injured thereby. *City of Chicago* v. *Brophy*, 79 Ill. R., 277.

A municipal corporation while acting within the scope of its authority in making excavations in a street for the purpose of opening or improving it, using proper care and skill, is not liable to an owner of a lot for injury resulting to his buildings from the removal of the lateral support of the soil in the street. *City of Quincy* v. *Jones et al.*, 76 Ill. R., 231.

(1) **A party cannot by reason of his ownership of adjoining property, claim** the absolute right to take up the sidewalk and extend his coal cellar under it, but as such a privilege is a great convenience in a city, and may, with proper care, be exercised with little or no inconvenience to the public, there is no doubt that the authority to make such cellar may be implied, in the absence of any action of the corporate authorities to the contrary, they having been aware of the progress of the work. Dillon on Mun. Corp., § 554; *Nelson* v. *Godfrey*, 12 Ill R., 22.

A city is liable where a sidewalk is out of repair, and remains so for a considerable time, actual notice to the street supervisor or city authorities will not be necessary to hold the city liable for an injury by a person in consequence of the dangerous condition of the same, while using due care on his part. Notice of the defective state of the walk will be presumed after the lapse of a sufficient time. *City of Springfield* v. *Doyle*, 76 Ill. R., 202.

A person passing over a sidewalk in daylight, when not crowded, is under obligations to use his eyes to direct his footsteps, and failing to do so, he is negligent. *Village of Kewanee* v. *Depew*, 80 Ill. R., 119.

One who is injured through defects in a sidewalk cannot recover from the city if his own negligence contributed to the injury; as where he walks hastily and negligently, or where he knew of the defect, and might have avoided it by taking the sidewalk on the other side of the street. *Lovenguth* v. *Bloomington*, 71 Ill. R., 238.

If sidewalks or street crossings happen to be obstructed, or to be in such a dangerous condition as to deter an ordinarily prudent man from using them, then one may walk elsewhere. If he does so, however, without sufficient reason, and is injured, his injury cannot be imputed to the negligence of the city. *O'Laughlin* v. *Dubuque*, 42 Iowa R., 539.

Where a party dug and left open a large pit in the street, along the sidewalk, without the consent of an incorporated town, in front of land owned by him, without any warning to passers by, while so left open a person in the night time while exercising due care fell into the pit and was injured, the town would not be liable unless it had actual notice of the nuisance, or had remained a sufficient time for notice to be implied. *Fahey* v. *President and Trustees Town of Harvard*, 62 Ill. R., 28.

An obstruction or defect in the streets or sidewalks of a city, to make the corporation liable, must be of such a nature that they are in themselves dangerous, or such that a person exercising ordinary prudence cannot avoid danger or injury in passing them; in general, such defects as can not be readily detected. A city or incorporated town is not required by law to respond in damages for every injury that may be received on a public street. Before a recovery can be had it must appear that the party injured used ordinary care to avoid the danger. *City of Quincy* v. *Barker*, 81 Ill. R., 300.

An ordinance prohibiting the hitching of any horses to shade trees in the streets, or to any shade tree or fence upon any street or upon any private premises, so far as it relates to trees in the public streets, is not void, and the owner of the adjoining property is liable to the penalty if he hitches his horse to such a tree. Property holders may be allowed to adorn the streets by setting out and caring for shade trees along their premises, and by so doing the corporation will not lose its control over the trees so planted, and may protect the same as against such parties. *Baker* v. *Town of Normal*, 81 Ill. R., 108.

matter in, and to prevent injury to, any street, avenue, alley or public ground.(1)

Sixteenth—**Crosswalks.**] To provide for and regulate crosswalks, curbs and gutters.

Seventeenth—**Obstructions.**] To regulate and prevent the use of streets, sidewalks and public grounds for signs, sign posts, awnings, awning posts, telegraph poles, horse troughs, racks, posting handbills and advertisements.(2)

Eighteenth—**Banners, placards.**] To regulate and prohibit the exhibition of carrying of banners, placards, advertisements or handbills in the streets or public grounds, or upon the sidewalks.

Nineteenth—**Flags.**] To regulate and prevent the flying of flags, banners or signs across the streets or from houses.

Twentieth—**Traffic.**] To regulate traffic and sales upon the streets, sidewalks and public places.

Twenty-first—**Horses, locomotives.**] To regulate the speed of horses and other animals, vehicles. cars and locomotives within the limits of the corporation.(3)

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(1) **Municipal corporations are bound to keep their streets in a safe condition** to travel, and are liable to respond in damages to any person receiving a special injury from their neglect of this duty. Where streets in a city or village are used for the deposit of materials by the adjoining proprietor, for building purposes, or dug up for the construction of sewers, the laying of water or gas pipes, or for other improvements by the corporation, or by the adjoining owner, the corporation is bound to see to it that proper guards, or lights by night be erected and maintained around such excavations or obstructions, so that travelers be not exposed to injury. *Seneca Falls* v. *Zalinski*, 15 N. Y. Supreme Ct., 571.

A city is liable in damages for an injury caused by an obstruction in the street, after actual notice of the same, or a lapse of time sufficient that it should by reasonable care and diligence have notice thereof for a failure to exercise reasonable care and diligence in the removal of the same; and where it allows dead animals or other objects that tend to frighten horses to lie on the streets, after the lapse of a sufficient time or such a time that it should by the exercise of reasonable diligence have had notice thereof, a city will be presumed to have had actual notice of such obstruction. *City of Chicago* v. *Hay*, 75 Ill. R., 530.

(2) **Authorities of a city may permit persons making improvements upon their premises** to occupy, temporarily, portions of the sidewalk and street, but the person so using the street is bound to more than ordinary care and expedition in the prosecution of the work. *Nelson* v. *Godfrey*, 12 Ill. R., 20.

To authorize the use of streets for posts of a telegraph company legislative sanction directly given, or mediately conferred through proper municipal action is necessary. If such posts be erected within the limits of a street or highway without such sanction, they are nuisances; but if the erection be thus authorized, they are not. Dillon on Mun. Corp., § 552, and cases cited.

(3) **Municipal corporations, in the absence of legislative restriction,** may control the mode of propelling cars within their limits, may prohibit the use of steam power and regulate the rate of speed. Dillon on Mun. Corp., § 565, and cases cited. Steam, as a motive power, may be used, along the streets of a city, by proper permission. *Moses et al.* v. *P. F. W. & C. R. R. Co.*, 21 Ill. R., 516.

The state has power to regulate the rate of speed of railway trains. *Toledo, P. & W. R. W. Co.* v. *Deacon*, 63 Ill. R., 91.

Concerning the speed of railroads through cities, towns and villages, the statute relating to railroads, chapter 114, has made the following provision:

Rev. Stat., 811. **"Speed through cities, etc.—damages.**] § 24. Whenever any railroad corporation shall, by itself or agents, run any train, locomotive engine, or car, at a greater rate of speed in or through the incorporated limits of any city, town or village, than is permitted by any

Twenty-second—**Numbering houses.**] To regulate the numbering of houses and lots.

Twenty-third—**Naming streets.**] To name and change the name of any street, avenue, alley, or other public place.

Twenty-fourth—**Horse railroads.**] To permit, regulate or prohibit the locating, constructing or laying a track of any horse railroad in any street, alley or public place; but such permission shall not be for a longer time than twenty years. [See "H. and D. Railroads," Rev. Stat., ch. 66.(1)

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ordinance of such city, town or village, such corporation shall be liable to the person aggrieved for all damages done the person or property by such train, locomotive engine or car; and the same shall be presumed to have been done by the negligence of said corporation, or their agents; and in addition to such penalties as may be provided by such city, town or village, the person aggrieved by the violation of any of the provisions of this section shall have an action against such corporation, so violating any of the provisions, to recover a penalty of not less than $100 nor more than $200, to be recovered in any court of competent jurisdiction, said action to be an action of debt, in the name of the People of the State of Illinois, for the use of the person aggrieved; but the court or jury trying the case may reduce said penalty to any sum, not less, however, than $50, where the offense committed by such violation may appear not to be malicious or willful: *Provided*, that no such ordinance shall limit the rate of speed in any case to less than four miles per hour."

The act which makes railroads liable for all damage done to any individual and for stock killed by any train or engine in any incorporated city or town, where trains are permitted to be run at a greater speed through such city or town than is permitted by the ordinance thereof, is constitutional. *C. R. I. & P. R. R. Co.* v. *Reidy*, 66 Ill. R., 43.

Where a party is killed by an engine in a city, in a suit against the company to recover damages on the ground of negligence in running the engine at too great a speed, the ordinance of the city limiting the speed of trains to six miles an hour within the corporate limits, is proper evidence to go to the jury on the question of negligence. *T. W. & W. R. R. Co.* v. *O'Connor, Adm'x*, 77 Ill. R., 391.

In a suit to recover for the killing of an animal within the limits of an incorporated town by a railroad company, on the ground of an alleged violation of an ordinance of the town, by the company in running its trains at a prohibited speed, it is indispensable to a recovery that the plaintiff should prove that the ordinance was in force at the time of the alleged accident. *C. & A. R. R. Co.* v. *Engle*, 76 Ill. R., 317.

Recovery may be had against a railroad company for killing a cow by a train of cars in an incorporated town, it appearing that no bell had been rung or whistle sounded, and that the train was running at a greater speed than allowed by ordinance, notwithstanding the cow was running at large contrary to ordinance, the negligence of the owner of the cow being slight with that of the company. *I. & St. L. R. R. Co.* v. *Peyton*, 76 Ill. R., 340.

Where an ordinance of a town prohibited the running of engines and cars within the limits of the town at a greater speed than six miles per hour, it was urged by a railroad that the regulation interfered with the powers conferred upon it in its charter to fix and regulate the rate of speed of trains upon its road; but it was held, that the company had no just cause of complaint, as the privileges conferred upon it were as much subject to the police laws of the state as an individual pursuing his business. *C. B. & Q. R. R. Co.* v. *Haggerty*, 67 Ill. R., 113.

Where the charter of a town gave the board of trustees power to declare what should be considered a nuisance, to remove the same, and to regulate the police of the town and to make such ordinances as the good of the town may require, that under those powers the town possessed the authority to adopt an ordinance prohibiting the running of railroad engines and cars within its limits, at a greater speed than six miles an hour. *C. B. & Q. R. R. Co.* v. *Haggerty*, 67 Ill. R., 113.

(1) **Concerning street railroads, the constitution has made the following provision,** Art. V:

"§ 4. No law shall be passed by the general assembly granting the right to construct and operate a street railroad within any city, town or incorporated village, without requiring the consent of the local authorities having the control of the street or highway proposed to be occupied by such street railroad."

The statute authorizing the condemnation of property by horse and dummy railroads, chap. 66, Rev. Stat. 1874, contemplates private property alone, and not property used and occupied by the public. *Central Horse Ry. Co.* v. *Ft. Clark Horse Ry. Co.*, 81 Ill. R., 523.

Twenty-fifth—**Railroad crossings.**] To provide for and change the location, grade and crossings of any railroad.(1)

Twenty-sixth—**Fence railroads.**] To require railroad companies to fence their respective railroads, or any portion of the same, and to construct cattle guards, crossings of streets and public roads, and keep the same in repair, within the limits of the corporation. In case any railroad company shall fail to comply with any such ordinance, it shall be liable for all damages the owner of any cattle or horses or other domestic animal, may susustain, by reason of injuries thereto while on the track of such railroad, in like manner and extent as under the general laws of this state, relative to the fencing of railroads; and actions to recover such damages may be instituted before any justice of the peace or other court of competent jurisdiction.(2)

The constitution, Art. 4, Sec. 22, declares that the general assembly shall not pass any local or special law for the following purposes:

"Granting to any corporation, association or individual the right to lay down railroad tracks, or amending existing charters for such purposes;

"Granting to any corporation, association or individual any special or exclusive privilege, immunity or franchise whatever."

The constitution, Art. 2, Sec. 14, further declares that no law, making any irrevocable grant of special privilege or immunities, shall be passed.

The constitutional prohibition as to the grant of any special or exclusive privilege, immunity or franchise, is a limitation upon the powers of the general assembly, and cannot be construed as a limitation upon the power of a municipal corporation to designate certain streets, and fix the conditions upon which a railway company, organized under a special charter previously granted, may build and operate its road. *Chicago City Ry. Co.* v. *The People*, 73 Ill. R. 541.

(1) **A city owns the fee to the public streets,** and has the exclusive power to control and regulate the same, and may rightfully permit a railroad company to occupy and use a public street, yet the railroad company must be responsible to property owners upon a street for such direct and physical damage as shall result from the construction of the road or the operation of the same after completion. *Stone* v. *F. P. & N. W. R. R. Co.*, 68 Ill. R., 394.

Where the fee of a street is in the abutting land owner, the corporation may grant the right to a railway company to lay its track along or accross any street, but the company avails of its privilege at its peril, and if, in laying its track, it causes a private injury to him who owns the fee in the adjoining premises, it must make good the damages sustained. *I. B. & W. R. R. Co.* v. *Hartley et al*, 67 Ill. R., 440.

A city is liable for damages where it grants the right of way to a railroad company to construct its track along a public street, and the company, under the right conferred upon it, made excavations along such street, which deprived lot owners of convenient access to and from the street to their lots, and the lots and tenements thereon were subject to injury by the caving and falling of the streets and lots. *City of Pekin* v. *Brereton*, 67 Ill. R., 474.

(2) **Railroad corporations are subject to the provisions of the statute** with regard to fencing, although such requirement is not expressed in their charters, and has never been assented to by them; they hold their franchise subordinate to the general police regulation in this regard. *O. & M. R. R. Co.* v. *McClelland*, 25 Ill. R., 140; *G. & C. M. R. R. Co.* v. *Crawford*, 25 Ill. R., 529.

Where a sufficient fence has been erected and from accident or wrong, and without the fault of the company it becomes insufficient to turn stock, the company has a reasonable time in which to repair it, and if they shall at once, when informed of its insufficiency, make the necessary repairs, they should not be held liable for injury resulting from its temporarily insufficient condition. *Ill. Cen. R. R. Co.* v. *Swearingen*, 33 Ill. R., 289.

Where the general railroad law requires railroads to fence their roads, and where animals escape from an enclosure, without the fault or knowledge of the owner and stray upon the railroad track, the railroad company will be responsible for the damage. *O. M. R. R. Co.* v. *Jones*, 63 Ill. R., 472.

On the subject of liability of railroad companies for injuries resulting from failure to fence their tracks, or other negligence, and remedies. See HAINES' TREATISE, new ed.

Twenty-seventh—**Railroad flagmen.**] To require railroad companies to keep flagmen at railroad crossings of streets, and provide protection against injury to persons and property in the use of such railroads. To compel such railroad to raise or lower their railroad tracks to conform to any grade which may, at any time, be established by such city, and where such tracks run lengthwise of any such street, alley oy highway, to keep their railroad tracks on a level with the street surface, and so that such tracks may be crossed at any place on such street, alley or highway. To compel and require railroad companies to make and keep open and to keep in repair ditches, drains, sewers and culverts along and under their railroad tracks, so that filthy or stagnant pools of water cannot stand on their grounds or right of way, and so that the natural drainage of adjacent property shall not be impeded.(1)

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under head of "actions against railroad companies," where all the Illinois cases are collected and referred to.

Where long after the construction of a railroad, a street was extended so as to cross the same, and the city passed an ordinance requiring the railroad company to make a safe and proper crossing by grading the approaches of the street at the crossings, there being nothing in the charter of the company imposing such duty, or any such duty imposed by general law in force at the time the company was created, in such a case the company was not liable to this new burden any further than might be required of a private person, that as the whole burden was sought to be placed upon the company without regard to benefits, the ordinance was in violation of the constitution and could not create any liability on the company, and the legislature itself could not impose such a burden without making compensation. *I. C. R. R. Co.* v. *City of Bloomington*, 76 Ill. R., 448.

A city or town may maintain an action of debt upon the promise of a railroad company to repay the damages recovered against the former by a person injured through a defective railroad crossing. *Portland* v. *Atlantic &c. R. R. Co.*, 66 Me. R., 485.

(1) **Railroad corporations are subject to police regulations** the same as natural persons, *Galena &c. R. R. Co.* v. *Loomis*, 13 Ill. R., 548; And when the public exigencies demand it railroad corporations must submit to such regulations the same as individuals. *O. & M. R. R. Co.* v. *McClelland*, 25 Ill. R., 140. If a railroad company unnecessarily obstructs the streets of a town, contrary to an ordinance of the town, it will be liable for the penalty prescribed for so doing. *Ill. Cent. R. R. Co.* v. *Galena*, 40 Ill. R., 344; *Great Western R. R. Co.* v. *Decatur* 33 Ill. R., 381; *T. P. & W. R. R. Co.* v. *Chenoa*, 43 Ill. R., 209.

An ordinance which required a railroad company to keep a flagman by day, and a red lantern by night, at a certain street crossing, when it did not appear that such crossing was unusually dangerous, or more so than ordinary crossings; *held*, not to be a reasonable requirement, and therefore within the constitution at limitation on the exercise of the police power. *Toledo W. & W. R. Co.* v. *City of Jacksonville*, 67 Ill. R., 37.

The difficulty of crossing railroad tracks in public streets, the detention of trains, frightening of horses, the danger to persons crossing the tracks, are inconveniences which property owners on the street have to suffer and for which they cannot recover in a suit for damages. *Stone* v. *F. P. & N. W. R. Co.*, 68 Ill. R., 394.

Where it is the duty of a railroad company to employ a watchman to warn persons crossing its tracks of danger from approaching trains, that at the time an accident occurred, the watchman was absent from his post of duty, the train was running at a much higher rate of speed than was allowed by law, and it was a question whether the bell was rung or the whistle sounded, under those circumstances an omission of any one of the duties mentioned would constitute gross negligence. *St. L. V. & F. H. R. R. Co.* v. *Dunn*, 78 Ill. R., 197.

Where a city has established no grade of a street on which the plaintiff had a lot, and upon which he built a house, and a railway company with the assent and permission of the city, filled up the space between the original embankment and the plaintiff's lot, so as to prevent access by carriages and wagons from the street, as was the custom, this being a special injury to the plaintiff, he was entitled to recover damages in a suit against the city. *City of Pekin* v. *Winkel*, 77 Ill. R., 56; *C. B. & Q. R. R. Co.* v. *McGinnis*, 79 Ill. R., 269.

Where a railroad company constructed its tracks along a public street in front of plaintiff's lots, occupied by him for mercantile business, under an ordinance of the town granting

Twenty-eighth.—**Bridges.**] To construct and keep in repair bridges, viaducts and tunnels, and to regulate the use thereof.(1) [See § 194.

Twenty-ninth.—**Culverts.**] To construct and keep in repair culverts, drains, sewers and cesspools, and to regulate the use thereof.(2) [See § 242.

Thirtieth.—**Watercourses.**] To deepen, widen, dock, cover, wall, alter or change the channel of water courses.

Thirty-first—**Canals.**] To construct and keep in repair canals and slips for the accommodation of commerce.

Thirty-second.—**Public landings.**] To erect and keep in repair public landing places, wharves, docks and levees.(3) [See § 219, 220.

Thirty-third.—**Use of landing places.**] To regulate and con-

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the right to do so, but which required the company to pay all damages to the property owners on such street that might accrue in consequence thereof, and the company in constructing its road, made a deep excavation in the street in front of plaintiff's lots, which diminished the value of the lots and injured the plaintiff's business by making his place difficult of access and hazardous for teams to approach the same. *Held*, that the company, by accepting the ordinance and acting under it, became bound by its terms to pay the plaintiff all damage caused to his property, and also damages in his business. *St. Louis V. & T. H. R. R. Co.* v. *Capps*, 67 Ill. R. 607.

Where a city council gave a railroad company the right to construct its track along a public street, and the company, under the right so conferred upon it, made excavations along such street so that the plaintiffs were deprived of convenient access to and from the street and to their lots, and the lots and tenements thereon were subject to injury by the caving and falling of the street and lots. *Held*, that the city was liable to the plaintiffs, in an action on the case, for the injury caused by such excavations. *City of Pekin* v. *Brexton*, 67 Ill. R., 477.

The expression "obstructions of any kind," in a town ordinance is broad enough to embrace the obstruction of a street by a railroad company with cars. *Ill. Cen. R. R. Co.* v. *City of Galena*, 40 Ill. R., 344.

Where an ordinance, prohibiting a railroad company from obstructing a street, but providing no penalty refers to another ordinance for the penalty, which last bears date subsequent to the commission of the offense, for which suit is brought, no recovery can be had by the town. *T. P. & W. R. W. Co.* v. *Town of Chenao*, 43 Ill. R., 209.

(1) **Authority to erect and keep in repair bridges** and streets, confers by implication the power to employ the means necessary to that end, and among these means may be the passage of an ordinance inflicting a fine for wilful or negligent injuries thereto. Dillon on Mun. Corp., § 539; *Korah* v. *Ottawa*, 32 Ill. R., 121.

All municipal corporations, whether incorporated by special charter or under the general law, have the power and it is their duty to keep in repair the bridges within their corporate limits, and if injury results to an individual by reason of a neglect of such duty, the town must respond in damages. *Town of Mechanicsburg* v. *Meredith*, 54 Ill. R., 84.

In an action against an incorporated town to recover for injuries received on account of a neglect of duty on the part of the defendant to keep a bridge in repair, it is not competent for the town to prove that prior to the accident the commissioners of highways of the township in which the incorporated town is situated, had assumed to perform the duty of keeping the bridge in repair. The usurpation of powers and assuming the duties of the incorporated town by the township authorities, though acquiesced in by the former, would not work a dissolution of the corporaiton, or relieve it from responsibility for neglect of duty. *Town of Mechanicsburg* v. *Meredith*, 54 Ill. R., 84.

(2) **Cities are responsible to lot owners** for injuries occasioned by grading or drainage. *City of Aurora* v. *Gilldt*, 56 Ill. R., 132; *City of Aurora* v. *Reed*, 57 Ill. R., 29; *City of Dixon* v. *Baker*, 65 Ill. R., 518; *City of Alton* v. *Hope*, 68 Ill. R., 167. Reasonable care must be excercised in the construction of improvements. *City of Dixon* v. *Baker*, 65 Ill. R., 518.

(3) **The power to erect and keep in repair public landing places** and the like are considered as discretionary powers, which the city is not bound to exercise, and is not liable for a failure to exercise them, but if it attempts to exercise them, it would be liable if an injury arise from a negligent performance thereof. *Goodrich et al.* v. *Chicago*, 20 Ill. R., 445.

trol the use of public and private landing places, wharves, docks and levees.

Thirty-fourth.—**Anchorage.**] To control and regulate the anchorage, moorage and landing of all water craft and their cargoes within the jurisdiction of the corporation.

Thirty-Fifth.—**Wharf-boats.**] To license, regulate and prohibit wharf-boats, tugs and other boats used about the harbor or within such jurisdiction.

Thirty-sixth.—**Rates of wharfage.**] To fix the rate of wharfage and dockage.

Thirty seventh.—**Collect wharfage.**] To collect wharfage and dockage from all boats, rafts or other craft landing at or using any public landing place, wharf, dock or levee within the limits of the corporation.

Thirty-eighth.—**Use of harbors.**] To make regulations in regard to the use of harbors, towing of vessels, opening and passing of bridges.

Thirty-ninth.—**Harbor masters.**] To appoint harbor masters, and define their duties.

Fortieth.—**Cleansing waters.**] To provide for the cleansing and purification of waters, water courses and canals, and the draining or filling of ponds on private property, whenever necessary to prevent or abate nuisances.

Forty-first.—**To license,** tax, regulate, suppress and prohibit hawkers, peddlers, pawnbrokers, keepers of ordinaries, theatricals and other exhibitions, shows and amusements, and to revoke such license at pleasure.(1)

Forty-second—**To license,** tax and regulate hackmen, draymen, omnibus drivers, carters, cabmen, porters, expressmen, and all others pursuing like occupations, and to prescribe their compensation.(2)

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(1) **Concerning the taxation of trades and occupations, the constitution** declares as follows, Art. IX:

"§ 1. The general assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property—such value to be ascertained by some person or persons, to be elected or appointed in such manner as the general assembly shall direct, and not otherwise: but the general assembly shall have power to tax peddlars, auctioneers, brokers, hawkers, merchants, commission merchants, showmen, jugglers, inn-keepers, grocery keepers, liquor dealers, toll bridges, ferries, insurance, telegraph and express interests or business, venders of patents, and persons or corporations owning or using franchises and privileges, in such manner as it shall from time to time direct by general law, uniform as to the class upon which it operates."

Sec. 1, Art. 9, of the constitution which declares that the General Assembly shall have power to tax peddlars, auctioneers, brokers, etc., does not operate as a prohibition on all other bodies to tax such persons, and for any other purpose than for state revenue, but the legislature may authorize municipal bodies to tax such persons. *Wiggins* v. *City of Chicago*, 68 Ill. R., 372.

(2) **A charter granting to a city the right to "exercise** and enjoy all rights, immunities, powers and privileges appertaining to a municipal corporation," and to "license, tax and reg-

Forty-third—**To license,** regulate, tax and restrain runners for stages, cars, public houses, or other things or persons.

Forty-fourth—**To license,** regulate, tax or prohibit and suppress billiards, bagatelle, pigeon hole or any other tables or implements kept or used for a similar purpose in any place of public resort, pin alleys and ball alleys.

Forty-fifth—**Bawdy houses.**] To suppress bawdy and disorderly houses, houses of ill-fame or assignation, within the limits of the city, and within three miles of the outer boundaries of the city; and also to suppress gaming and gambling houses, lotteries, and all fraudulent devises and practices for the purpose of gaming or obtaining money or property; and to prohibit the sale or exhibition of obscene or immoral publications, prints, pictures or illustrations.(1) [See § 216, 217.

Forty-sixth—**Liquor traffic.**] To license, regulate and prohibit the selling or giving away of any intoxicating, malt, vinous, mixed or fermented liquor, the license not to extend beyond the municipal year in which it shall be granted, and to determine the amount to be paid for such license: *Provided*, that the city council in cities, or president and board of trustees in villages, may grant permits to druggists for the sale of liquors for medicinal, mechan-

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ulate hackney carriages, omnibusses," etc., does not authorize the city authorities to grant to one person the sole and exclusive right to run omnibusses in the city. *Logan* v. *Pyne*, 43 Iowa, 524.

An ordinance that "there shall be levied upon every hackman, drayman, omnibus driver, carter, teamster, cabman or expressman, and all others pursuing like occupation, the sum of ten dollars for a license," does not apply to a farmer driving his team through the city. *City of Collinsville* v. *Cole*, 78 Ill. R., 114.

A provision in a city charter gave the power "to license, tax and regulate and control wagons and other vehicles conveying loads in the city; to prescribe the width and tire of the same, the weight of loads to be carried, and the rates of carriage." *Held*, under that rule of strict construction applicable to such powers, the authority to license was qualified by the clause for prescribing rates of carriage, and was applicable only to such vehicles in respect of which it is proper and customary with municipal authorities to prescribe rates of carriage, such as common carriers. *Joyce* v. *City of East St. Louis*, 77 Ill. R., 156.

Wholesale merchants who keep and use their own wagons for the purpose of transferring goods sold by them to depot or wharf for shipment, who charge and receive from the persons to whom the goods were sold and shipped a sum of money for so doing, are not within the meaning of an ordinance regulating, licensing and suppressing hackmen, draymen, carters, porters, omnibus drivers, cabmen, carmen or others. *Farwell* v. *City of Chicago*, 71 Ill. R., 269.

Power to make ordinances respecting streets, wagons, carts, drays, etc., as to the council shall appear necessary for the security, welfare and convenience of the city, authorizes an ordinance regulating the weight which wagons and other vehicles employed in the transportation of goods, wares, or produce of any kind, shall carry through the streets of the city. But an ordinance which would operate as a total exclusion of the rights of the citizens to pass over the streets of the city with his loaded wagon and team would be unreasonable and void, as against common right. Dillon on Mun. Corp., § 540, and cases cited.

(1) **Power to suppress bawdy houses gives the corporation authority,** by implication, to adopt, by ordinance, the proper means to accomplish this end; and among the methods which may be adopted, is one forbidding the owners of houses from renting or letting the same for this purpose, or with knowledge that they are to be so used. But the power by the council of a city to make such by-laws as it may deem expedient for effectually preventing and suppressing houses of ill-fame, does not authorize the council to decide that a given house is kept for that purpose, nor if kept for that purpose, does it authorize the council to order it demolished; nor if thus demolished, will it justify the officers of the city who did it. Dillon on Mun. Corp., § 310; *Welch* v. *Stowell*, 2 Doug. (Mich.) R., 322.

ical, sacramental and chemical purposes only, subject to forfeiture, and under such restrictions and regulations as may be provided by ordinance: *Provided, further*, that in granting licenses such corporate authorities shall comply with whatever general law of the state may be in force relative to the granting of licenses.(1) [See § 216; also Rev. Stat. "Dram Shops," ch. 43.

(1) CONCERNING LICENSES.

The general law of the state, relative to granting of licenses, chapter 43 of the Revised Statutes, entitled "Dram Shops," provides as follows:

Rev. Stat., 438. **"How license may be granted.]** § 3. The county boards of each county may grant licenses to keep so many dram shops in their county as they may think the public good requires, upon the application by petition of a majority of the legal voters of the town, if the county is under township organization, and if not under township organization, then of a majority of the legal voters of the election precinct or district where the same is proposed to be located, and upon the payment into the county treasury of such sum as the board may require, not less than $50 nor more than $300 for each license, and upon compliance with the provisions of this act: *Provided*, such board shall not have power to issue any license to keep any dram shop in any incorporated city, town or village, or within two miles of the same, in which the corporate authorities have authority to license, regulate, restrain or prohibit the sale of liquors, or in any place where the sale of intoxicating liquors is prohibited by law.

"Form of license—rights under—may be revoked.] § 4. The license shall state the time for which it is granted, which shall not exceed one year, the place where the dram shop is to be kept, and shall not be transferable, nor shall the person licensed keep a dram shop at more than one place at the same time, and any license granted may be revoked by the county board whenever they shall be satisfied that the person licensed has violated any of the provisions of this act, or keeps a disorderly or ill-governed house or place of resort for idle or dissolute persons, or allows any illegal gaming in his dram shop, or in any house or place adjacent thereto.

"Bond—how taken—suit on.] § 5. No person shall be licensed to keep a dram shop, or to sell intoxicating liquors, by any county board, or the authorities of any city, town or village, unless he shall first give bond in the penal sum of $3,000, payable to the People of the State of Illinois, with at least two good and sufficient sureties, freeholders of the county in which the license is to be granted, to be approved by the officer who may be authorized to issue the license, conditioned that he will pay to all persons all damages that they may sustain, either in person or property, or means of support, by reason of the person so obtaining a license selling or giving away intoxicating liquors. The officer taking such bond may examine any person offered as security upon any such bond, under oath, and require him to subscribe and swear to his statement in regard to his pecuniary ability to become such security. Any bond taken pursuant to this section may be sued upon for the use of any person, or his legal representatives, who may be injured by reason of the selling or giving away any intoxicating liquor by the person so licensed, or by his agent or servant."

An incorporated town may provide by ordinance against the sale of liquor, in less quantity than one barrel, without a license, and such ordinance is not repugnant to the general law prohibiting sale without a license in quantities less than one quart. *Byers et al.* v. *Olney*, 16 Ill. R., 35.

The legislature has power to authorize cities to prohibit the sale of liquor or beer by retail. *Kettering* v. *City of Jacksonville*, 50 Ill. R., 39.

Where incorporated towns shall have the exclusive privilege to grant license within the incorporated limits of the town, the county authorities have no right or power to interfere in any manner whatever with the granting of license. *Village of Coulterville* v. *Gillen*, 72 Ill. R., 599.

Where the legislature confers the power to suppress the sale of liquor in groceries, or to regulate, license and restrain the same, it is a matter purely in the discretion of the city, whether or not it wholly prohibit its sale, or it license or regulates the same. *Swuchow* v. *City of Chicago*, 68 Ill. R., 445.

The control of the liquor traffic is a police regulation, and no one can acquire a vested right in it by license, as that it may not be resumed when the interest of society require it. *Swuchow* v. *City of Chicago*, 68 Ill. R., 444.

Where, under the general laws, no person has the right to sell spirituous liquors without a license, and when a city has the entire control of the regulation of the sale of liquors, and refuses to grant such license, whether rightfully or wrongfully, it does not justify the sale without license. *Kadgihn* v. *City of Bloomington*, 58 Ill. R., 229.

The common council of a city has the power to license and regulate the sale of liquors, and has the right to make it a condition on granting a license for the sale of liquors, that the grantee thereof shall keep his place closed on Sundays, election days, fast days, holidays, or

Forty-seventh—**Charters excepted.**] The foregoing shall not be construed to affect the provisions of the charter of any literary institution heretofore granted.

other days, or shall close at a particular hour, and for violation of the condition to forfeit his license. *Swuchow* v. *City of Chicago*, 68 Ill. R., 445.

Ordinances discriminating in the rates for licenses in different parts of a city, are not unconstitutional. *City of East St. Louis* v. *Wehrung*, 46 Ill. R., 392. And where the license fee, under an ordinance, was claimed to be so unreasonable as to amount to prohibition, the charter conferring power only to regulate the traffic. *Held*, that as defendant had sold liquor without trying to obtain a license at any price, the question would not be discussed. *Hensoldt* v. *Town of Petersburg*, 63 Ill. R., 141.

Where the authorities of a town adopted a subsequent ordinance, revising the whole subject of selling or dealing in spirituous liquors: *Held*, that this must be taken as a substitute for all prior ordinances on the same subject, although the last contained no words of repeal. *Booth* v. *Town of Carthage*, 67 Ill. R., 102.

Where an ordinance of the city prohibited the sale of spirituous liquors except by druggists for sacramental, chemical, mechanical, or medical purposes, and provided that a quarterly report of the druggist, showing the kind and quantity and to whom sold, and on whose prescription or assurance, such report to be verified by the affidavit of the druggist, or every clerk or servant in his employ; held, that it was unreasonable and oppressive, and an invasion of the sanctity of private business. *City of Clinton* v. *Phillips*, 58 Ill. R., 102.

VIOLATION OF LICENSE REGULATIONS—REMEDIES.

The power to enforce the observance of by-laws and police regulations of a city by penalty not exceeding $100 for any offense against the same, does not necessarily confine the city to that mode, nor to a suit on the bond of a grocery keeper for violation by him, but the city, in the exercise of police powers conferred, may provide for the revocation of his license. *Swuchow* v. *City of Chicago*, 68 Ill. R., 445.

Where a special charter of a town, granted before the adoption of the present constitution, confers powers upon the corporate authorities to impose fines or penalties for the unauthorized sale of intoxicating liquors, they are not limited or restricted to the same penalties imposed by the general law. *Baldwin* v. *Murphy*, 82 Ill. R., 485.

Where a city ordinance prohibited the keeping of a bar room or tippling house between the hours of 12 P. M. and 5 A. M., and a party whose main business was keeping a restaurant, with a bar room connected therewith, closed his bar by drawing a curtain across it, it was held that a conviction was proper. *Baldwin* v. *City of Chicago*, 68 Ill. R., 418.

The holder of a license to sell intoxicating liquors is liable to indictment for unauthorized sales made by his agent or servant, under the act of 1872. *McCutcheon* v. *The People*, 69 Ill. R., 601.

Where a city has no power to prohibit the sale of intoxicating liquors except for mechanical or medicinal purposes, and passes an ordinance of absolute prohibition, then, unless the prosecution is for the sale for medicinal or mechanical purposes, the defendant cannot attack the ordinance because it may be *ultra veres*. *Harburgh* v. *City of Monmouth*, 74 Ill. R., 367.

Where a person is being prosecuted for selling beer by the glass, in violation of a town charter which forbids beer to be brought within three miles of the town, "for the purpose of trafficking therein in any way whatsoever," the offense charged being within the power of the prohibition in the legislature, the question cannot arise whether that clause was unconstitutional, in that it was broad enough in its language to embrace other modes of traffic not within the power of the legislature to prohibit. *Neifing* v. *Town of Pontiac*, 56 Ill. R., 172.

Where a municipal corporation passed an ordinance declaring the sale of spiritous liquors to be a nuisance, the general law is not thereby repealed. While a license from town or city authorities would protect the holder of it, yet if those authorized fail or refuse to grant a license, the general law would be violated by a sale in the city limits, and the aggressor may be punished under it. *Gardner* v. *The People*, 20 Ill. R., 430.

An ordinance of a town, declaring a nuisance all intoxicating liquors, kept within the limits of the town for the purpose of being sold or given away as a beverage, to be drank within the limits of the town, and which directs the police officers of the town to abate the nuisance, by removing the liquor beyond the town limits, it was held, could not authorize such officers to sieze and carry away property, without first having the question judicially determined whether such ordinance had been violated. *Darst* v. *The People*, 51 Ill. R., 286.

A charter which declares the sale, and the keeping on hand, for sale, of liquors, a nuisance, and provides for its summary abatement and suppression, and confers powers on the police magistrate to issue warrants commanding the search of the premises of persons suspected of selling, and which makes the mere possession *prima facie* evidence of unlawful intent, and, without satisfactory explanation, sufficient evidence of a sale, and of keeping on hand for sale, provides for a search. Such provision is odious and unreasonable, and in conflict with the

Forty-eighth—**Prohibit liquor traffic.**] And the city council in cities, and president and board of trustees in villages, shall also have the power to forbid and punish the selling or giving away of any intoxicating, malt, vinous, mixed or fermented liquor to any minor, apprentice or servant, or insane, idiotic or distracted person, habitual drunkard, or person intoxicated.(1)

Declaration of Rights and therefore void. *Sullivan* v. *City of Oneida*, 61 Ill. R., 242; *Sullivan* v. *Stephenson*, 62 Ill. R., 290

THE DRAM SHOP LAW.

Any person who has no license to sell intoxicating liquors, who gives it away in any quantity less than one gallon, or in any quantity to be drank on the premises, or in any adjacent room or place, or who resorts to any other shift or device to evade the provisions of the statute is guilty of unlawfully selling. *Rickart* v. *The People*, 79 Ill. R., 85.

The sixth section of the act of 1872, relating to intoxicating liquors, which provides that every person guilty of violating the "first and second sections," shall forfeit, etc., does not require the violation of both sections before a party can be subjected to the punishment provided, but the penalties named are for the violation of either the first or second section. *Streeter* v. *The People*, 69 Ill. R., 595.

Every section of the statutes entitled "Dram Shops" is aimed at such as keep a dram shop, not however with a view to their suppression; but the provisions of the sixth section do not apply to a person who treats a friend at his private house, as an act of hospitality. *Albrecht* v. *The People*, 78 Ill. R., 510.

The act to provide against the evils resulting from the sale of intoxicating liquors in the state of Illinois, is of a character highly penal, providing a right of action unknown to the common law, in which the party prosecuting has a decided advantage, and the act should receive a strict construction. *Fentz* v. *Meadows*, 72 Ill. R., 540; *Meidil* v. *Anthis*, 71 Ill. R., 241; *Freese* v. *Tripp*, 70 Ill. R., 496.

The statute which repealed the liquor law of 1872, in express terms saved and reserved the rights which had accrued under a repealed statute as to any offense committed against the former law, or as to any act done, any penalty, forfeiture or punishment incurred, or any right accrued, therefore the repeal of such act in no wise affected the people's right to prosecute for penalties incurred under it. *Mullinix* v. *The People*, 76 Ill. R., 211.

The statute gives a right of action to any one who shall be injured in person, or property in consequence of the intoxication, habitual or otherwise, of any person, and the party causing such intoxication in whole or in part, cannot escape liability because he may not reasonably have foreseen the consequences. *Roth* v. *Eppy*, 80 Ill. R., 283.

The statute gives a right of action to the wife for three separate decriptions of injury caused by the selling or giving away of intoxicating liquors to her husband, injury in person or property, or means of support. *Hackett* v. *Smelscley*, 77 Ill. R., 109.

The master is liable to a wife for damages in a civil action for a sale of liquor made by his clerk to her husband when notified not to sell to him. But the fact that the sale was made by a servant in violation of master's orders may be considered in mitigation of exemplary damages. *Keedy* v. *Howe*, 72 Ill. R., 133; *Fentz* v. *Meadows*, 72 Ill. R., 540.

To constitute the offense of keeping open a tippling house, it is not necessary, under the statute, that the house be kept open as on week days. It will be within the offense named if is so kept that access may be had thereto on Sunday, and facilities afforded for the obtaining of intoxicating drinks, and it is not material whether the access is by the front or back door, or whether the door is kept open, or is only opened on application for admittance. *Kwer* v. *The People*, 78 Ill. R., 294.

Justices of the peace have jurisdiction in cases to recover the fine imposed for a violation of the second section of the act entitled "Dram Shops" to provide for licensing of and against the evils arising from the sale of intoxicating liquors. *Rickart* v. *The People*, 79 Ill. R., 85.

In prosecutions before justices of the peace under the ninth section of the act of January 13th, 1872, to provide against the evils resulting from the sale of intoxicating liquors, it is not necessary that there should be a complaint made under oath. *Ferguson* v. *The People*, 73 Ill. R., 559.

(1) **The statute making it criminal to sell intoxicating liquors to minors** without the consent of their parents, etc., is not restricted to the keepers of dram shops, and therefore it is not necessary to allege in the indictment that the defendant, or those for whom he acted in making such sale, was the keeper of a dram shop. *Johnson* v. *The People*, 83 Ill. R., 431.

No authority is conferred to sell liquor to minors by a license to keep a dram shop, except upon the written order of parents, guardian or family physician, or to a person intoxicated, and it is his duty to know that parties to whom he sells are authorized to buy. *McCutcheon* v. *The People*, 69 Ill. R., 601,

Forty-ninth—**Markets.**] To establish markets and market houses, and provide for the regulation and use thereof.(1)

Fiftieth—**Sale of meats.**] To regulate the sale of meats, poultry, fish, butter, cheese, lard, vegetables, and all other provisions, and to provide for place and manner of selling the same.(2)

Fifty-first—**To prevent** and punish forestalling and regrating.

Fifty-second—**Sale of bread.**] To regulate the sale of bread in the city or village; prescribe the weight and quality of the bread in the loaf.

Fifty-third—**Inspection of meats.**] To provide for and regulate the inspection of meats, poultry, fish, butter, cheese, lard, vegetables, cotton, tobacco, flour, meal and other provisions

Fifty-fourth—**To regulate the inspection,** weighing and measuring of brick, lumber, fire wood, coal, hay, and any article of merchandise.

Fifty-fifth—**Weights and measures.**] To provide for the inspection and sealing of weights and measures.

Fifty-sixth—**To enforce the keeping** and use of proper weights and measures by vendors.

Fifty-seventh—**To regulate the construction,** repairs and use of vaults, cisterns, areas, hydrants, pumps, sewers and gutters.

Fifty-eighth—**To regulate places** of amusement.

Fifty-ninth—**To prevent intoxication,** fighting, quarreling, dog fights, cock fights, and all disorderly conduct.

Sixtieth—**Fences and walls.**] To regulate partition fences and party walls.

Sixty-first—**To prescribe the thickness,** strength and manner of constructing stone, brick and other buildings, and construction of fire escapes therein.

Sixty-second—**Fire limits.**] The city council, and the president and trustees in villages, for the purpose of guarding against the calamities of fire, shall have power to prescribe the limits within which wooden buildings shall not be erected or placed or repaired, without permission, and to direct that all and any buildings within

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(1) **A city ordinance cannot restrain a merchant or dealer** in family groceries from selling vegetables at his place of business, outside of the market limits, during any portion of the day, under the pretext of regulating markets. Such a regulation would be in restraint of trade, unreasonable and unjust. *Caldwell* v. *City of Alton*, 33 Ill. R., 416; *City of Chicago* v. *Rumpff*, 45 Ill. R., 90; *City of Bloomington* v. *Wahl*, 46 Ill. R., 489.

(2) **A city cannot by ordinance restrain a merchant** or dealer in family groceries from selling vegetables at his place of business, outside of the market limits. *Caldwell* v. *Alton*, 33 Ill. R., 416; *Bloomington* v. *Wahl*, 46 Ill. R., 489.

Such regulations must be reasonable and uniform in their operation, calculated to promote the general welfare of the inhabitants, and must not create monopolies. *Bloomington* v. *Wahl*, 46 Ill. R., 489; *Chicago* v. *Rumpff*, 45 Ill. R., 90.

It is for the court and not the jury to decide whether an ordinance is or is not in restraint of trade. *Peoria* v. *Calhoun*, 29 Ill. R., 317.

the fire limits, when the same shall have been damaged by fire, decay or otherwise, to the extent of fifty per cent. of the value, shall be torn down or removed, and to prescribe the manner of ascertaining such damage.

Sixty-third—**Chimneys.**] To prevent the dangerous construction and condition of chimneys, fire-places, hearths, stoves, stove-pipes, ovens, boilers and apparatus used in and about any building and manufactory, and to cause the same to be removed or placed in a safe condition, when considered dangerous; to regulate and prevent the carrying on of manufactories, dangerous in causing and promoting fires; to prevent the deposit of ashes in unsafe places, and to cause all such buildings and inclosures as may be in a dangerous state to be put in a safe condition.

Sixty-fourth—**Engine houses.**] To erect engine houses, and provide fire engines, hose carts, hooks and ladders, and other implements for prevention and extinguishment of fires, and provide for the use and management of the same by voluntary fire companies or otherwise.

Sixty-fifth—**Gunpowder.**] To regulate and prevent storage of gunpowder, tar, pitch, resin, coal oil, benzine, turpentine, hemp, cotton, nitro-glycerine, petroleum, or any of the products thereof, and other combustible or explosive material, and the use of lights in stables, shops and other places, and the building of bonfires; also to regulate and restrain the use of fire-works, fire-crackers, torpedoes, Roman candles, sky-rockets, and other pyrotechnic displays.

Sixty-sixth—**Police.**] To regulate the police of the city or village, and pass and enforce all necessary police ordinances.(1)

Sixth-seventh—**Steam boilers.**] To provide for the inspection of steam boilers.

Sixty-eighth—**Policemen.**] To prescribe the duties and powers of a superintendent of police, policemen and watchmen.

Sixty-ninth—**To establish and erect calabooses,** bridewells, houses of correction and workhouses, for the reformation and confinement of vagrants, idle and disorderly persons, and persons convicted of violating any city or village ordinance, and make rules and regulations for the government of the same. and appoint necessary keepers and assistants.

Seventieth—**To use the county jail** for the confinement or pun-

(1) **A city incorporated under the general law** for the incorporation of cities and villages, possesses the power to provide for the appointment of a city marshal, and to vest him with the entire control of the police force, and to reorganize the department by ordinance, and to carry out and give effect to the provisions of such ordinance when passed. *Sheridan et al.* v. *Colvin et al.*, 78 Ill. R., 237.

ishment of offenders, subject to such conditions as are imposed by law, and with the consent of the county board.

Seventy-first—**To provide by ordinance** in regard to the relation between all the officers and employees of the corporation in respect to each other, the corporation and the people.(1)

Seventy-second—**To prevent and suppress riots,** routs, affrays, noises, disturbances, disorderly assemblies in any public or private place.

Seventy-third—**Cruelty to animals.**] To prohibit and punish cruelty to animals.

Seventy-fourth—**Vagrants.**] To restrain and punish vagrants, mendicants and prostitutes.

Seventy-fifth—**Nuisance.**] To declare what shall be a nuisance, and to abate the same; and to impose fines upon parties who may create, continue or suffer nuisances to exist.(2)

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(1) **A municipal corporation is not liable for the illegal and unauthorized** acts of its officers, in administering an ordinance. The fact the trustees adopted the ordinance, and appointed the town constable to see they were executed, would not render the town liable. *Town of Odell* v. *Schroeder*, 58 Ill. R., 353.

But municipal corporations will be liable for the illegal acts of its officers and servants, proceeding contrary to law, or in an irregular manner, where the act done is within the corporate power, and might have been lawfully accomplished, had the municipal authorities proceeded according to law. *City of Chicago* v. *Turner*, 80 Ill. R., 419.

WHAT IS OF ITSELF A NUISANCE.

(2) **A common nuisance is an offense against the public,** by doing anything injurious to all the people, or by omitting to do that which the common good requires. *Earp* v. *Lee*, 71 Ill. R., 193.

Anything done to the hurt or annoyance of the lands, tenements or hereditaments of another, is a private nuisance, and may be abated, that is taken away or removed by the party aggrieved thereby, so as he commits no riot in the doing of it. *Calef* v. *Thomas*, 81 Ill. R., 478.

Privies are regarded as prima facia nuisances, and though necessary and indispensible in connection with the use of property for the ordinary purposes of habitation, yet if they are built or allowed to remain in such a condition as to annoy others in the proper enjoyment of their property, by reason of the noisome smells that arise therefrom, or by the escape of filthy matter therefrom upon the premises of another, or so as to corrupt the water of a well or spring, they are nuisances in fact. *Wahle* v. *Reinbach*, 76 Ill. R., 322.

A railway constructed on a public street of a city, without authority of law, is a continuous obstruction, which amounts to a public nuisance. *Denver & S. Ry. Co.* v. *Denver City Ry. Co.*, 2 Col. T., 673.

An object on a highway calculated to frighten a horse of ordinary gentleness, as a pile of stones, may be on that ground a nuisance. Such an object is not distinguishable in law from an obstruction which a traveler drives against. *Clinton* v. *Howard*, 42 Conn. R., 295.

A building so erected that its roof overhangs the street, is a nuisance, and its erection and maintenance is an indictable offense. *Garland* v. *Towne*, 55 N. H. R., 55.

Any business, however lawful, which causes annoyances that materially interfere with the ordinary comfort, physically, of human existence, is a nuisance that should be restrained; and smoke, noise and bad odors, even when not injurious to health, may render a dwelling so uncomfortable as to drive from it any one not compelled by poverty to remain. The discomfort must be physical, not such as depends upon taste or imagination. But whatever is offensive physically to the senses, and by such offensiveness makes life uncomfortable, is a nuisance. *Wahle* v. *Reinbach*, 76 Ill. R., 322.

A railroad company which permits an animal killed by its locomotives to remain and decompose on the road bed, so near to a dwelling house as to render the inmates sick, is liable to the person in whom the possession of the dwelling is legally vested as for a nuisance. Such occupant, if husband, is the proper party plaintiff, although the sickness complained of is that of the wife. *Ellis* v. *Kansas City &c. R. R. Co.*, 63 Mo. R., 131.

Seventy-sixth—**Board of health.**] To appoint a board of health, and prescribe its powers and duties.

WHAT IS NOT A NUISANCE.

Manufactories, machine shops and flouring mills, are not generallly to be regarded as nuisances. There are many annoyances, inconveniences and interruptions incident to the enjoyment of property in a state of society, for which the law does not and cannot give compensation. *Cooper* v. *Randall*, 59 Ill. R., 317.

In the absence of an adverse right by prescription, grant or otherwise, the owner has the right to erect a fence or building upon his own land, which will have the effect to deprive the owner of adjacent premises of light and air to his house, and obstruct his view from the same, and such erection, unless made of offensive material, will not be a nuisance for which any action lies. *Guest* v. *Reynolds*, 68 Ill. R., 478.

The introduction of a steam locomotive upon a highway, as a means of travel, is not necessarily a nuisance, and whether its use as such has, in a particular instance, been so negligently managed to the injury of others, as to give rise to a right of action, is one of fact for the jury, as a question of reasonable conduct and management on the part of both parties. *Macomber* v. *Nichols*, 34 Mich. R., 212.

Where owners of lots have erected docks on their land bordering on the Chicago River, and enjoyed the use of the same for twenty-five years, without complaint or interruption from any source, and even if they were not riparian owners, and their boundaries did not extend beyond the water's edge, after such long acquiescence the corporate authorities of the city cannot declare them a nuisance, which, if they are, have become so by the act of the city. *City of Chicago* v. *Laflin et al.*, 49 Ill. R., 172.

Where an ordinance of a town declared that if any person shall place or allow to remain, wood in quantities over ten cords, or shall keep any butcher shop in a manner deletrious to the health of the people of the town, or offensive to them in their business avocations, or of any private family, the same is declared a nuisance. To render wood placed within the corporate limits a nuisance, it is necessary it should be deleterious to the health, or offensive to a private family, or to the inhabitants. *Ewbanks* v. *Town of Ashley*, 36 Ill. R., 177.

POWER TO DECLARE A NUISANCE.

Incorporated towns have the power to declare the sale of liquors within their limits shall be deemed a nuisance, and punished as such; they, have the exclusive privilege of granting license to sell such liquors, and to prescribe the terms upon which they may be sold. *Village of Coulterville* v. *Gillen*, 72 Ill. R., 599.

The legislature has authority under the constitution to confer on an incorporated town the power to declare what shall be a nuisance, and to provide for their abatement, and under this power, an ordinance declaring that swine running at large are nuisances, and providing for the abatement thereof is valid. *Roberts* v. *Ogle*, 30 Ill. R., 459.

Under what is called the police power, the legislature has the right to authorize the abatement of a public nuisance, and the carrying on of an illegal traffic in intoxicating liquors, and the assembling of the idle and vicious for that purpose, is a nuisance, and may be so declared, and abated according to law. *Streeter* v. *The People*, 69 Ill. R., 595.

A municipal corporation, in the absence of any general laws, either of the city or state, within which a given structure can be shown to be a nuisance, cannot by its mere declaration that it is one, subject it to be removed by any person supposed to be aggrieved, or even by the city itself. *C. R. I. & P. R. R. Co.* v. *City of Joliet*, 79 Ill. R., 25.

Under a power in the charter to declare the selling, giving away, or the keeping on hand, for sale, of liquors, within the city a nuisance, ordinances making possession within the city, without any intention of selling therein, an offense, are invalid. *Sullivan* v. *City of Oneida*, 61 Ill. R., 242.

ABATEMENT OF NUISANCE.

Where it is made the duty of a city to remove, as far as they may be able, every nuisance which may endanger health, the courts cannot control the manner in which this shall be done. Dillon on Mun. Corp., § 59, and cases cited.

Nuisances which obstruct travel in public highways, in navigable streams, may be abated by any citizen who is thereby incommoded, and the right of the citizen to abate nuisances is confined to that class of cases, and even in such cases it must be done without a breach of the peace. *Earp* v. *Lee*, 71 Ill. R., 193.

Where a hedge, planted by an owner on his own land, is suffered to grow and extend over the right of way of a railroad company so as to obstruct it, the company will have the clear right, and it is their duty, to trim such hedge, doing no unnecessary damage. *Toledo, W. & W. R. W. Co.* v. *Green*, 67 Ill., 199.

Where the charter of an incorporated town gave the board of trustees power to declare what should be considered a nuisance, and to remove the same, that under those powers the town possessed the authority to so order the use of private property within its limits as to

Seventy-seventh—**Hospitals.**] To erect and establish hospitals and medical dispensaries, and control and regulate the same.

Seventy-eighth—**Promote health.**] To do all acts, make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease.

Seventy-ninth—**Cemetaries.**] To establish and regulate cemeteries within or without the corporation, and acquire lands therefor, by purchase or otherwise, and cause cemeteries to be removed, and prohibit their establishment within one mile of the corporation.(1) [See Rev. Stat. "Cemeteries," ch. 21, § 4.

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prevent its proving dangerous to the persons and property of its citizens. *C. B. & Q. R. R. Co.* v. *Haggerty*, 67 Ill. R., 113.

PROSECUTION FOR NUISANCE—LIABILITY.

In prosecutions for the violation of town ordinances, such as a nuisance in obstructing a road, being a civil proceeding, the offense need not be proved beyond a reasonable doubt, but by a preponderance of testimony. *Town of Havana* v. *Briggs*, 58 Ill. R., 486; *Town of Lewiston* v. *Proctor*, 27 Ill. R., 414.

In an action for a penalty, in the obstruction of village street, if the complaint gives a local description, sufficient to fix the precise points obstructed, and also the termini of the road, the latter may be disregarded. *Town of Lewiston* v. *Proctor*, 27 Ill. R., 414.

Injuries resulting from the obstruction of highways leading to the premises of the party complaining, and interfering with access to them, are proper grounds of recovery by the injured party, even though many others sustain like injuries from the same cause. *Park* v. *C. & S. W. R. Co.*, 43 Iowa, R., 636.

A party in whose possession and control a railroad is placed, with power to control its use, is equally liable with the original owner, for a nuisance arising from the manner of its construction. *Tate* v. *Missouri, K. & P. R. R. Co.*, 64 Mo. R., 149.

The remedy for a public nuisance is by indictment. The law does not authorize individuals to tear down and destroy a building in which an unlawful business is carried on, nor permit a court, on conviction, to have such building destroyed or abated: the offenders are subject to punishment. *Earp* v. *Lee*, 71 Ill. R., 193.

On the trial of an indictment for a nuisance in obstructing a highway, the questions, whether the road was ever worked or recognized by the public authorities, or whether the road was used as a public highway, are proper, and the answers should be admitted in evidence. The description of a road in an indictment is material, and must be proved as laid. *Martin* v. *The People*, 23 Ill. R., 395. In such trial the existence of the highway may be proved by prescription from user. And unless it is assumed by the pleadings, documentary proof of the location of the highway is not indispensable. *Dimon* v. *The People*, 17 Ill. R., 416.

A party who is indicted for a nuisance by obstructing a highway cannot be convicted for continuing an obstruction; they are distinct offenses. *Lowe* v. *The People*, 28 Ill. R., 518.

A city being between itself and an author of a nuisance in a street, also a wrong doer, it can have no remedy over against the author of the nuisance for damages, it may be compelled to pay to a third person, in consequence of the wrongful act. *Knox* v. *City of Sterling*, 73 Ill. R., 214.

Where the author of a nuisance is liable over to a city for any damages the corporation may be compelled to pay for the wrongful act; notice by the corporation to him, of a suit growing out of the nuisance, will not make him a party to the judgment, or estop him from questioning his liability when sued. *Knox* v. *City of Sterling*, 73 Ill. R., 214.

Where a city is compelled to pay damages to a person injured by the owner or occupant of premises creating a nuisance in the sidewalk adjoining the premises, without the authority of the city, expressed or implied, the author of such nuisance will be responsible to the city for the damages so paid by it. *Gridley* v. *City of Bloomington*, 68 Ill. R., 47.

(1) **The law has made the following general provisions concerning cemeteries** affecting cities and other municipal corporations:

Laws 1877, p. 51. **"Power to establish cemeteries.**] § 1. Any city, village, or township in this state may establish and maintain cemeteries within and without its corporate limits, and acquire lands therefor, by purchase, condemnation or otherwise; and may lay out lots of convenient size for families; and may sell lots for family burying ground, or to individuals for burial purposes."

Eightieth—**Animals.**] To regulate, restrain and prohibit the running at large of horses, cattle, swine, sheep, goats, geese and dogs, and to impose a tax on dogs.(1) [See Rev. Stat., "Animals," ch. 8, § 1–7.

Rev. Stat., 196. **"When cemetery may be removed—expense.**] § 1. Whenever any cemetery shall be embraced within the limits of any town or city, it shall be lawful for the corporate authorities thereof, if, in their opinion, any good cause exists why such cemetery should be removed, to cause the remains of all persons interred therein to be removed to some other suitable place: *Provided*, said corporate authorities shall have first obtained the assent of the trustees or other persons having the control or ownership of said cemetary, or a majority thereof: *And, provided, further*, that when such cemetery is owned by one or more private parties, or private corporation or chartered society, the corporate authorities of such town or city may require the removal of such cemetery to be done at the expense of such private parties, or private corporation or chartered society, if such removal be based upon their application."

Rev. Stat., 196. **"When cemetery land may be sold.**] § 1. In all cases where cemetery companies, incorporated by special law, have been or shall be prohibited by any act of the legislature or municipal ordinance from occupying any land purchased for burial purposes, and the boundaries limited by such law or ordinance, it shall and may be lawful for any such company to sell and convey the land outside of such boundaries for other than burial purposes."

Where certain officers of the town of Lake View were created a board of trustees, by an act in 1865, with power, among other things, to abate and remove nuisances, and punish the authors thereof by penalties, fines and imprisonment, and to authorize and direct the summary abatement thereof; and such board of trustees, under this authority, passed an ordinance forbidding any cemetery to be opened in the town, without first obtaining their permission, it was held that the board of trustees had no power, under this grant, to prohibit in advance the establishment of any cemetery except as authorized by the board. *Town of Lake View* v. *Metz*, 44 Ill. R., 82.

A cemetery is not a nuisance, per se, and the subject of legislative prohibition. The legislature has the constitutional right to pass laws to regulate the interment of the dead, so as to prevent injury to the health of the community, and this in respect to a private corporation acting under a charter, as well as with individuals. *Lake View* v. *Rose Hill Cem. Co.*, 70 Ill. R., 191.

While cemeteries in cities are not per se nuisances, special circumstances may make them so. It is not, however, sufficient that they affect the market value of property in the vicinity. Dillon on Mun. Corp., § 307, and cases cited.

The public health, comfort and convenience are concerned in the proper regulation of burials; and the evils resulting from its neglect are especially to be apprehended in the crowded population of cities. Power to regulate this matter may properly be conferred upon municipal corporations, and such power will be held to be given by authority to make police regulations or to pass by-laws respecting the health, good government and welfare of the place. Dillon on Mun. Cor., § 306, and cases cited.

Where a cemetery company is chartered with power to acquire lands for burial purposes, not exceeding five hundred acres, and it acquires the lands and expends its money in preparing and adorning the same, an act of the legislature prohibiting the company from using any of its lands outside its then inclosure for the burial of the dead, without regard to the manner of the exercise of its franchise, is unconstitutional and void, as impairing the obligation of the contract contained in the charter. *Lake View* v. *Rose Hill Cem. Co.*, 70 Ill. R., 191.

(1) **An ordinance of a municipal corporation declaring that swine** running at large shall be deemed a nuisance, is valid. The legislature has authority to confer on municipal corporations the power to declare what shall be a nuisance, and to provide for abating the same, under which, such ordinance would be good. *Roberts* v. *Ogle*, 38 Ill. R., 459.

Penalties prescribed by ordinance against animals running at large, can only be enforced by suit. *Willis* v. *Legris*, 45 Ill. R., 289. And an ordinance providing that damages caused by cattle running at large shall be assessed by three disinterested persons, is void. In a proceeding to ascertain such damages, the owner is entitled to a trial by jury, as in any other case at law. *Bullock* v. *Geomble*, 45 Ill. R., 218.

The special remedy given by the ordinance is simply cumulative. *Ames et al.* v. *Carlton*, 41 Ill. R., 261. In proceedings under such ordinances, all the requirements must be strictly pursued or the officers seizing and impounding cattle will become trespassers. *Clark* v. *Lewis*, 35 Ill. R., 417.

Where an ordinance of a town declared that hogs running at large in the town should be a nuisance, and prohibited the same, and directed that hogs and pigs so found running at large should be taken up by the police constable and impounded, it was held that the hogs of a party who resided near the town limits, and who suffered them to go at large, were subject to be impounded. *Friday* v. *Floyd*, 63 Ill. R., 50.

Where a party's horses escaped from his inclosures against his will, and he

Eighty-first—**Packing houses.**] To direct the location and regulate the management and construction of packing houses, renderies, tallow chandleries, bone factories, soap factories and tanneries, within the limits of the city or village, and within the distance of one mile without the city or village limits.

Eighty-second—**To direct the location** and regulate the use and construction of breweries, distilleries, livery stables, blacksmith shops and founderies within the limits of the city or village.

Eighty-third—**To prohibit any offensive** or unwholesome business or establishment within or within one mile of the limits of the corporation.

Eighty-fourth—**To compel the owner** of any grocery, cellar, soap or tallow chandlery, tannery, stable, pig-sty, privy, sewer or other unwholesome or nauseous house or place, to cleanse, abate or remove the same, and to regulate the location thereof.

Eighty-fifth—**Census.**] The city council, or trustees of a village, shall have power to provide for the taking of the city or village census; but no city or village census shall be taken by authority of the council or trustees oftener than once in three years.

Eighty-sixth—**Public buildings.**] To provide for the erection and care of all public buildings necessary for the use of the city or village.(1)

Eighty-seventh—**Ferries—Toll bridges.**] To establish ferries, toll bridges, and license and regulate the same, and, from time to time, fix tolls thereon. [See § 194.

Eighty-eighth—**To authorize the construction** of mills, mill-races and feeders on, through or across the streets of the city or village, at such places and under such restrictions as they shall deem proper.

Eighty-ninth—**Extend streets.**] The city council shall have power, by condemnation or otherwise, to extend any street, alley or highway over or across, or to construct any sewer under or through any railroad track, right of way, or land of any railroad

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immediately went in search of them, but before he found them they were seized by the police constable of the town, that under such circumstances the horses were not running at large in the legal sense of the term, and the constable had no right to detain from the owner. *Kindee* v. *Gillespie*, 63 Ill. R., 88; *Town of Collinsville* v. *Scanland*, 58 Ill. R., 221.

Where a city ordinance authorized the mayor by proclamation, to order all persons within the city limits to confine or secure by muzzle their dogs, and the city marshal to carry into effect the provisions of the ordinance, under the mayor's proclamation, employed an agent directing him to destroy all dogs found running at large and not properly muzzled. *Held*, the marshal would not be liable for the wanton, wilful, or negligent act of such agent in killing a dog not within the terms of the ordinance and proclamation. *Pritchard* v. *Keefer*, 53 Ill. R., 117.

(1) **Under a charter creating a general municipal government,** with all the ordinary machinery thereof, there is power to erect a town hall for corporate purposes. The question of its necessity must be left in a great degree to the people and the officers. *Greeley* v. *The People*, 60 Ill. R., 19; *Lankenan* v. *The People*, 62 Ill. R., 287; *Castle* v. *The People*, 62 Ill. R., 287.

company (within the corporate limits); but where no compensation is made to such railroad company, the city shall restore such railroad track, right of way or land to its former state, or in a sufficient manner not to have impaired its usefulness.

Ninetieth—**Rail road tracks.**] The city council or board of trustees shall have no power to grant the use of, or the right to lay down, any railroad tracks in any street of the city, to any steam or horse railroad company, except upon a petition of the owners of the land representing more than one-half of the frontage of the street, or so much thereof as is sought to be used for railroad purposes.(1) [See Rev. Stat., "H. and D. R. R.," ch. 66, § 3; Railroads and Warehouses," ch. 114, § 19.

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(1) **The general railroad law, concerning the use of streets** in municipal corporations, Chapter 114, Revised Statutes, provides among other things that nothing therein contained shall be construed to authorize the construction of any railroad upon or across any street in any city, or incorporated town or village, without the assent of the corporation of such city, town or village; *Provided*, that in case of the constructing of said railway along highways, plank roads, turnpikes or canals, such railway shall either first obtain the consent of the lawful authorities having control or jurisdiction of the same, or condemn the same under the provisions of any eminent domain law now or hereafter in force in this state. Rev. Stat. 803, § 20.

The law concerning horse and dummy railroads, Chapter 66 of the Revised Statutes, has made the following provisions:

Rev. Stat., 571. "**Location of road—consent—notice—damages.**] § 3. No such company shall have the right to locate or construct its road upon or along any street or alley, or over any public ground in any incorporated city, town or village, without the consent of the corporate authorities of such city, town or village, nor upon or along any road or highway, or upon any public ground without any incorporated city, town or village, except upon the consent of the county board. Such consent may be granted for any period, not longer than twenty years, on the petition of the company, upon such terms and conditions, not inconsistent with the provisions of this act, as such corporate authorities or county board, as the case may be, shall deem for the best interests of the public: *Provided*, no such consent shall be granted, unless at least ten day's public notice of the time and place of presenting such petition shall have been first given by publication in some newspaper published in the city or county where such road is to be constructed, and except upon the condition that the company will pay all damages to owners of property abutting upon the street, alley, road, highway or public ground upon or over which such road is to be constructed, which they may sustain by reason of the location or construction of the road; the same to be ascertained and paid in the manner provided by law for the exercise of the right of eminent domain.

"**Control of streets reserved—police power.**] § 4. Every grant to any such company of a right to use any street, alley, road, highway or public ground, shall be subject to the right of the proper authorities to control the use, improvement and repair of such street, alley, road, highway or public ground, to the same extent as if no such grant had been made, and to make all necessary police regulations concerning the management and operation of such railroad, whether such right is reserved in the grant or not."

The appropriation of property to the construction of a railroad for the transportation of persons or property, is a public use. *C. R. I. & P. R. R. Co.* v. *City of Joliet*, 79 Ill. R., 25.

Where by a city charter, its local authorities are vested with exclusive control over the streets, and those authorities grant permission to locate railway tracts along the streets, the owners or occupants of property fronting on such streets, cannot enjoin the laying of such tracks, nor receive compensation for such use of a street. *Moses et al* v. *P. F. W. & Chicago R. R. Co.*, 21 Ill. R., 516.

A proviso in a city ordinance granting privileges to a railroad company, that such railroad company should be subject to all laws and ordinances that might thereafter be passed to regulate railroads in the city, only means that the railroad shall be subject to all reasonable and legal ordinances for the regulation of the road. It has no such scope that the railroad company should abandon or take up and remove its track at the bidding of the common council. *C. R. I. & P. R. R. Co.* v. *City of Joliet*, 79 Ill. R., 25.

In a proceeding by a railroad company to condemn land for the use of its road, it is sufficient that it is a *defacto* corporate body. *McAuley* v. *C. C. & I. C. R. R. Co.*, 83 Ill. R., 348.

Ninety-first—**To tax, license and regulate** auctioneers, distillers, brewers, lumber yards, livery stables, public scales, money changers and brokers.(1)

Ninety-second—**To prevent and regulate** the rolling of hoops, playing of ball, flying of kites, or any other amusement or practice having a tendency to annoy persons passing in the streets or on the sidewalks, or to frighten teams and horses.

Ninety-third—**Lumber yards.**] To regulate and prohibit the keeping of any lumber yard, and the placing or piling or selling any lumber, timber, wood or other combustible material, within the fire limits of the city.

Ninety-fourth—**To provide, by ordinance,** that all the paper, printing, stationery, blanks, fuel, and all the supplies needed for the use of the city, shall be furnished by contract, let to the lowest bidder.

Ninety-fifth—**Junk stores.**] To tax, license and regulate second-hand and junk stores, and to forbid their purchasing or receiving from minors, without the written consent of their parents or guardians, any article whatsoever.(2)

Ninety-sixth—**To pass all ordinances,** rules, and make all regulations, proper or necessary, to carry into effect the powers granted to cities or villages, with such fines or penalties as the city council or board of trustees shall deem proper: *Provided*, no fine or penalty shall exceed $200, and no imprisonment shall exceed six months for one offense.(3)

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(1) **The power to tax, license and regulate auctioneers, etc.,** authorizes the city authorities to adopt any reasonable ordinance for the purpose. The city may tax, may license, and regulate the business, and the ordinance may properly empower the mayor to revoke the license for cause. *Wiggins* v. *City of Chicago*, 68 Ill. R., 373.

The term "banker" includes all the business of a money changer, and the term "money changer" is defined to be "a broker who deals in money or exchanges." One doing a banking business is a money changer within the meaning of the above clause. *Hinckley* v. *Belleville*, 43 Ill. R., 183.

(2) **The selling of second-hand books, as an incident to an ordinary book store,** is not dealing in second-hand goods, within the meaning of an ordinance of a city which required any person who keeps a store, office, or place of business, for the purchase or sale of second-hand clothing, garments of any kind, or second-hand goods, wares or merchandise. *Eastman* v. *City of Chicago*, 79 Ill. R., 178.

(3) **Where a municipal corporation is invested with power to pass ordinances,** an ordinance enacted by the legislative branch of the corporation, and within the power conferred, has the force and effect of a law passed by the legislature, and cannot be regarded otherwise than a law of, and within the corporation. *Mason* v. *City of Shawneetown*, 77 Ill. R., 533.

But a corporation cannot give its ordinances effect beyond its own limits. *Strauss* v. *Pontiac*, 40 Ill. R., 301.

Ordinances of a city must be reasonable, and must not prohibit the business or adopt unreasonable regulations which would be oppressive or highly injurious to the business. *Wiggins* v. *City of Chicago*, 68 Ill. R., 373. Ordinances must not be unreasonable, oppressive, or such as will create a monopoly. *Tugman* v. *City of Chicago*, 78 Ill. R., 405.

An ordinance which makes an act done by one penal, and imposes no penalty for the same act done under like circumstances, by another, cannot be sanctioned or sustained, because it would be unjust and unreasonable. Nor can a municipal corporation by ordinance pro-

63. Style of ordinances.] § 2. The style of the ordinances in cities shall be: "Be it ordained by the City Council of....."

64. Publication of ordinances—When take effect.] § 3. All ordinances of cities and villages imposing any fine, penalty, imprisonment or forfeiture, or making any appropriation, shall, within one month after they are passed, be published at least once in a newspaper published in the city or village, or, if no such newspaper is published therein, by posting copies of the same in three public places in the city or village; and no such ordinance shall take effect until ten days after it is so published. And all other ordinances, orders and resolutions shall take effect from and after their passage, unless otherwise provided therein.(1)

65. Proof of ordinances.] § 4. All ordinances, and the date of publication thereof, may be proven by the certificate of the clerk, under the seal of the corporation. And when printed in book or pamphlet form, and purporting to be published by authority of the board of trustees or the city council, the same need not be otherwise published; and such book or pamphlet shall be received as evidence of the passage and legal publication of such ordinances, as of the dates mentioned in such book or pamphlet, in all courts and places without further proof.(2) [See Rev. Stat., "Evidence, etc.," ch. 51, § 14.

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hibit certain persons from engaging in a particular kind of business in a given locality, and permit others to continue their business. *Tugman* v. *City of Ceicago*, 78 Ill. R., 548.

Where an act is a criminal offense, indictable in the superior court, an ordinance of city or town, making such act a criminal offense, punishable by fine or imprisonment, is void. *Town of Washington* v. *Hammond*, 76 N. C. R., 33.

But ordinances are not rendered void or inoperative by the fact that the acts forbiden by it are also forbidden by a general law of the state. *Polinsky* v. *People*, 18 N. Y. Supreme Ct. R., 390.

An ordinance is not necessarily all void because some part of it may be so. *Baker* v. *Town of Normal*, 81 Ill. R., 108.

Where a city ordinance is enacted to promote the public peace, safety and convenience, and provides the sanction of a fine, the violation of the ordinance is a public offense, and the guilty party is liable to a criminal prosecution. *Jaquith* v. *Royce*, 42 Iowa R., 406.

The enforcement of municipal ordinances is by the municipal authorities, not by indictment in the courts of general criminal jurisdiction. *State* v. *White*, 76 N. C. R., 15; *State* v. *Threadgill*, Id., 17.

A court of chancery has no jurisdiction to enjoin the prosecution of a suit for the violation of a village ordinance, nor is it within the power of the parties to waive the question of jurisdiction, and compel it to try the cause. *Yates* v. *Village of Batavia*, 79 Ill. R., 500.

(1) **Where a charter of a city required** the city authorities to publish a digest of its ordinances within one year after grant of its charter and every five years thereafter, that this requirement was only directory, and a neglect to observe it presented no ground for defeating a recovery for violation of an ordinance. *Whalin* v. *City of Macomb*, 76 Ill. R., 49.

(2) See form of clerk's certificate, Div. II, *post.*

Where a charter of a town provides that no ordinance shall be of any force until the same has been advertised, by publishing copies in three public places in said town for ten days, but contains no provision as to how proof of publication should be made, it must be proved as at common law. *C. A. R. R. Co.* v. *Engle*, 76 Ill. R., 317

In a suit brought by the city to recover a penalty for the violation of a city ordinance, it is proper to exclude an ordinance when offered in evidence, unless it is shown that the city had authority to pass the ordinance. *City of Alton* v. *Hartford Fire Ins. Co.*, 72 Ill. R., 328.

66. Suits for violating ordinances.] § 5. All actions brought to recover any fine, or to enforce any penalty, under any ordinance of any city or village, shall be brought in the corporate name of the city or village as plaintiff; and no prosecution, recovery or acquittal, for the violation of any such ordinance, shall constitute a defense to any other prosecution of the same party for any other violation of any such ordinance, although the different causes of action existed at the same time, and, if united, would not haxe exceeded the jurisdiction of the court or magistrate.(1)

If the ordinances of a city, town or village, incorporated under the general law of 1872, are published in book or pamphlet form, purporting to have been published by authority of the board of trustees or the city council, no other publication need be shown to admit them in evidence, nor need the fact of their passage be proven. *Byars* v *City of Mt. Vernon*, 74 Ill. R., 467.

When an ordinance of a town is proved in the manner prescribed in the book of ordinances for the authentication of the ordinances of the town, it is proper to admit it in evidence. *Hendsoldt* v. *Petersburg*, 63 Ill. R., 111.

Under the charter of the town of Jacksonville, the production of a newspaper, published in the town, containing what appears as an ordinance of the town, which is headed, "published by authority," and the ordinance purports to be signed by the president of the board, and countersigned by the town clerk, it was held, proves a sufficient adoption and authentication of the ordinances. *Block* v. *Town of Jacksonville*, 36 Ill. R., 130.

(1) **The proper form of action to bring for the violation of an ordinance** of an incorporated town, is debt, unless the charter prescribes a different action. *Jacksonville* v. *Block*, 36 Ill. R., 507.

The law requiring security for costs in prosecutions under penal statutes was held not to refer to prosecutions under city ordinances. Statutes requiring security for costs to be given in actions on penal statutes do not apply to actions brought by municipal corporations for violation of town or city ordinance. Such ordinances are not statutes within the meaning of that act. *Town of Lewistown* v. *Proctor*, 23 Ill. R., 533; *Jacksonville* v. *Block*, 36 Ill. R., 507; *Quincy* v. *Ballance*, 30 Ill. R., 185.

Where the charter of a town provides that the summons shall state the ordinance violated, the party summoned cannot be tried under another and different ordinance from that stated in the summons. *Gates* v. *City of Aurora*, 44 Ill., 122.

In a suit by an incorporated town, to recover for a violation of an ordinance for the sale of liquors, recovery may be had on several violations, so that the judgment shall not exceed the amount of the jurisdiction of the justice or police magistrate before whom the suit was tried. *Hensoldt* v. *Petersburg*, 63 Ill. R., 111.

An action of debt, for violation of a city ordinance, is a civil proceeding, and it is wrong to imprison therefor. *City of Kinmundy* v. *Mahan* 72 Ill. R., 462.

In a prosecution under an ordinance for selling intoxicating liquors, a complaint under oath, upon information and belief that a party has violated a certain section of an ordinance, by selling intoxicating liquors in the city, not having a legal license to keep a grocery, is substantially good. *Byars* v. *City of Mt. Vernon*, 78 Ill. R., 11.

Where a complaint in a suit, for violation of an ordinance, recited the ordinance violated by its title, and such ordinance was superceded by a subsequent one revising the whole subject, the title of which did not appear in the record, the defendant objected that no recovery could be had, as the ordinance referred to in the complaint had been repealed: *Held*, that the recovery could be sustained under the subsequent ordinance, as its title may have been the same as the one repealed. *Booth* v. *Town of Carthage*, 67 Ill. R., 102.

Where a defendant, when sued for the violation of an ordinance, on the trial below, did not object to the introduction of the ordinance on the ground that it had not been published as required by the charter, but confined his objections to reading the whole of it, contending that only certain parts of it should go in evidence: *Held*, by admitting that the ordinance had been properly published, the whole of it was properly admitted as evidence. *Booth* v. *Town of Carthage*, 67 Ill. R., 102.

As set out in a plea, the ordinance simply declared the obstructing a street a misdemeanor, without declaring a penalty, or giving to municipal authorities jurisdiction of the offense: *Held*, that such plea did not show that the city was entitled to recover a fine, impose a penalty, or issue process of any kind for the offense, and was therefore bad. *Bowman* v. *St. Louis*, 43 Ill. R., 337.

67. Fines and licenses—Paid to Treasurer.] § 6. All fines and forfeitures for the violation of ordinances, when collected, and all moneys collected for licenses or otherwise, shall be paid into the treasury of the corporation, at such times and in such manner as may be prescribed by ordinance.(1)

68. Summons—Affidavit—Punishment.] § 7. In all actions for the violation of any ordinance, the first process shall be a summons: *Provided, however*, that a warrant for the arrest of the offender may issue in the first instance upon the affidavit of any person that any such ordinance has been violated, and that the person making the complaint has reasonable grounds to believe the party charged is guilty thereof; and any person arrested upon such warrant shall, without unnecessary delay, be taken before the proper officer to be tried for the alleged offense. Any person upon whom any fine or penalty shall be imposed, may, upon the order of the court or magistrate before whom the conviction is had, be committed to the county jail or the calaboose, city prison, workhouse, house of correction, or other place provided by the city or village for the incarceration of offenders, until such fine, penalty and cost shall be fully paid: *Provided*, that no such imprisonment shall exceed six months for any one offense. The city council or board

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The charter of a town authorized the board of trustees to inflict such punishment for any offense against the laws of the incorporation as may be provided by law for like offense against the laws of the state: *Held*, that this did not authorize the passage of an ordinance imposing a fine of from five to fifty dollars for assault, etc., the minimum fine of such offense, under the laws of the state, being three dollars. *Town of Petersburg* v. *Metzker*. 21 Ill. R., 205.

The fact that an ordinance covers cases, among others, which the city has no power to control, is no reason why it should not be enforced in those cases over which the city has power. *Kettering* v. *City of Jacksonville*, 50 Ill. R., 39.

A party cannot be liable to a penalty imposed by an ordinance of an incorporated town, nor can a conviction therefor be had unless it appears that the ordinance took effect and was in force at the time the act complained of was committed; and the provision of the charter must have been complied with in passing it, and the fact must be shown by proper proof. *Booth* v. *Town of Carthage*, 67 Ill. R., 192; *Newlan* v. *Pres. and Trustees of Aurora*, 14 Ill. R., 364.

Whether a city has forfeited its charter, can only be raised in a direct proceeding by *scire facias* or *quo warranto*. The question can not be raised in a suit for a violation of its ordinances. *Whalin* v. *City of Macomb*, 76 Ill, R., 49.

In a suit to recover the penalty fixed by ordinance, for the violation of an ordinance, the fact that the defendant is liable on a bond given, does not preclude a recovery for the violation of the ordinance. *Whalin* v. *City of Macomb*, 76 Ill. R., 49.

As to whether a judgment on a fine for violation of an ordinance of a municipal corporation is a bar against a suit for violation of a state law for the same offense, the decisions are not uniform. It is clear, however, that a state law and an ordinance of a town or city corporation not inconsistent with each other, and in harmony with the constitution, may stand together. And the weight of authority seems to be that an offense committed that offends against the proper police regulations of a municipal corporation, and at the same time offends against the penal laws of the state, can legally be prosecuted for either, and a prosecution under one will not be a bar to a legal prosecution under the other. *Hamilton* v. *The State*, Court of Ap. of Texas, 1878; Cooley on Const. Lim., top p. 198, 3d ed; *Rogers* v. *Jones*, 1 Wend. R., 217; *City of St. Louis* v. *Cafferator*, 24 Mo. R., 97; *Mayor etc.* v. *Allain*, 14 Ala. R., 400.

(1) **Municipal corporations have the right to retain** and appropriate to their own use all moneys arising from the granting of licenses to sell liquor where no provisions are made to the contrary, such being the immemorial custom in such grants to municipal bodies. *Mt. Carmel* v. *Wabash County*, 50 Ill. R., 69.

of trustees shall have power to provide, by ordinance, that every person so comitted shall be required to work for the corporation, at such labor as his or her strength will permit, within and without such prison, work-house, house of correction, or other place provided for the incarceration of such offenders, not exceeding ten hours each working day; and for such work the person so employed to be allowed, exclusive of his or her board, $2 for each day's work on account of such fine and cost.(1)

69. Jurisdiction of justices, etc.] § 8. Any and all justices of the peace and police magistrates shall have jurisdiction in all cases arising under the provisions of this act, or any ordinance passed in pursuance thereof.(2)

70. Constable or sheriff may serve process, etc.] § 9. Any constable or sheriff of the county may serve any process, or make any arrests authorized to be made by any city officer.(3)

71. Jurisdiction over waters—Street labor.] § 10. The city or village government shall have jurisdiction upon all waters within or bordering upon the same, to the extent of three miles beyond the limits of the city or village, but not to exceed the limits of the State; and may, by ordinance require every able-bodied male inhabitant, of such city or village, above the age of twenty-one years and under the age of fifty years, (excepting paupers, idiots, lunatics, and such others as are exempt by law,) to labor on the streets and alleys of such city or village, not more than three

(1) **How suit may be brought.** Where the legislature confers jurisdiction upon justices of the peace for the recovery of a penalty for the violation of a town ordinance, the suit might be brought in the same manner as any civil suit before a justice, and the writ should be an ordinary summons, in the absence of some provision requiring a capias. And the suit should be conducted according to the rules governing trials in civil cases. *Ewbanks* v. *Ashley*, 36 Ill. R., 177.

The proper action to bring for the violation of an ordinance of an incorporated town, where the form of action is named, is debt, unless the charter prescribes a different form of action. The summons in such case may be in the form prescribed by the statute in civil cases. *Town of Jacksonville* v. *Block, et al.*, 36 Ill. R., 507.

Where a town ordinance provides that any person who may be guilty of a breach of an ordinanc prohibiting the traffic in liquors, shall "upon conviction forfeit and pay the sum of twenty-five dollars for each and every offense, and be imprisoned in the county jail of said county until the fine and costs be paid;" such provision is not making imprisonment the punishment, but the imprisonment is but a mode provided for collecting the fine and costs. *Bollig ex parte*, 31 Ill. R., 88,

The constitutional provision which declares that no person shall be imprisoned for debt, unless upon refusal to deliver up his estate, applies only to actions upon contracts, express or implied; it does not extend to actions for torts. *The People ex rel* v. *Cotton*, 14 Ill. R., 414; *McKindley* v. *Rising*, 28 Ill. R., 337; *The People* v. *Greer*, 43 Ill. R., 213.

The mode of proceeding in prosecutions for violation of ordinances will be found fully laid down in HAINES' TREATISE, new ed., in that portion of the work devoted to the jurisdiction of police magistrates, which should be consulted in bringing suits in such cases.

(2) **In a prosecution before a police magistrate, objections to a complaint,** upon which a defendant is arrested for the breach of an ordinance, must be made before the police magistrate, and no objection can be taken on appeal in the circuit court. *Byars* v. *City of Mt. Vernon*, 77 Ill. R., 467.

(3) **The law concerning the authority and duty of constables** and other officers in making arrests, will be found fully set forth in HAINES' TREATISE, new edition.

days in each year, but such ordinance shall provide for commutation of such labor at not more than one dollar and fifty cents per day. [As amended by act approved April 10, 1875. See § 44, 215, 216.

ARTICLE VI.

OFFICERS--THEIR POWERS AND DUTIES.

72. Officers enumerated.
73. Other officers—duties of city marshal.
74. Appointment—vacancies—duties—powers.
75. Oath—bond.
76. Commission—certificate—delivery to successor.
77. Qualifications of officers.
78. Officers not to be interested in contracts, etc.
79. Bribery—penalty.
80. Mayor, etc., not to hold other office.
81. Duties of clerk.
82. Record of ordinances.
83. Conservators of the peace—powers.
84. Compensation of mayor.
85. Compensation of aldermen, etc.
86. Compensation of other officers.
87. Administering oaths.

72. Officers.] § 1. There shall be elected, in all cities organized under this act, the following officers, viz: a mayor, a city council, a city clerk, city attorney, and a city treasurer.(1)

(1) **The law provides for the election of members of the county board,** styled assistant supervisors, in cities where township organization exists in the following section of the township organization act, Art. VII:

"**Election of officers.** § 1. At the annual town meeting in each town there shall be elected by ballot, one supervisor, (who shall be *ex officio* overseer of the poor,) one town clerk, one assessor and one collector, who shall severally hold their offices for one year, and until their successors are elected and qualified, and such justices of the peace, constables and highway commissioners as are provided by law. *Provided*, that in any town or any city not included within the limits of any town (except in Cook county) having four thousand inhabitants, there shall be elected one additional supervisor, to be styled assistant supervisor; in towns having six thousand five hundred inhabitants, there shall be elected two assistant supervisors, and so, for every additional twenty-five hundred inhabitants there shall be elected one additional supervisor—the population of towns to be ascertained by the last federal or state census preceeding the election. *Provided*, that nothing in this act shall be so construed as to diminish the representation that any city or town may now be entitled to by law. But in case such city or town is now entitled to a greater representation than is given by this section, it shall be entitled to no additional representation under this section; and the members of the board of supervisors from such city or town now provided for by law shall continue to be elected as now required by law; *And, provided, further*, that whenever the representation of any city or town is or shall become less than is given by this section, no increased representation under any special acts shall be had by such city or town, but its representation shall be as provided for in this section."

The constitution prohibits the passage of local or special laws, providing for the election of members of the board of supervisors in incorporated towns and cities. Art. IV, § 22.

Concerning city officers in counties under township organization, the law has made the following provisions. See act approved May 23, 1877, HAINES' TOWNSHIP ORGANIZATION LAWS, Div. I.

73. Other officers—Duties of city marshal.] § 2. The city council may, in its discretion, from time to time, by ordinance passed by a vote of two-thirds of all the aldermen elected, provide

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"Territory of city organized as town.] § 1. That the County Board, in any County under township organization, may provide that the territory embraced within any city in such county shall be organized as a town: *Provided*, such territory shall have a population of not less than three thousand. *And Provided*, the City Council in such city shall by resolution request such action by the County Board.

"Town in city.] § 2. The territory of any city now organized, within the limits of any county under township organization, and not situated within any town, shall be deemed to be a town.

"Election of officers.] § 3. All town officers within any town organized as aforesaid shall be elected at the annual charter election of such city. All general elections held in such city and town shall be held at the same voting places as the city elections, with judges and clerks appointed in like manner as for the city elections.

"Powers exercised by council.] § 4. The powers vested in such town shall be exercised by the city council.

"What city council may provide.] § 5. The city council in such city and town may by ordinance provide that the offices of city and town clerk shall be united in the same person; that the election of highway commissioners shall be discontinued; that the offices of supervisor and poormaster shall be separated and the poormaster appointed by the city council.

"May regulate the number of justices.] § 6. The city council in such city and town may from time to time regulate the number of justices of the peace, police magistrates and constables to be elected within such city and town; but the number elected to either of such offices shall not exceed the number allowed by law to other towns of like population.

"Vacancies.] § 7. Vacancies in any of the town offices within such city and town may be filled by the city council."

The law also provides that in incorporated towns, or incorporated villages, whose limits are co-extensive with the limits of a town; or in any organized town where the number of voters at the last preceding general election exceeded three hundred, the county board may require one or more additional ballot-boxes and places for the reception of votes to be provided. The law also prescribes the mode of conducting elections at town meetings in such cases. See act approved March 9, 1877, HAINES' TOWNSHIP ORGANIZATION LAWS, DIV. I.

Where the members of a corporation are directed to be annually elected, the words are only directory, and do not take away the power incident to the corporation to elect afterwards when the annual day has, by some means, free from design or fraud, been passed by. *The People* v. *Town of Fairbury* 51 Ill. R. 49.

Officers elected on the proper day, refusing to qualify, become officers *defacto*, and their acts are valid as to third persons, and can only be inquired into directly, not collateraly. *Coles County* v *Allison*, 23 Ill. R., 437.

It is a general principle of the law, that the ministerial acts of an officer *defacto* are valid and effectual, when they concern the public and the rights of third persons, although it may appear that he has no legal or constitutional right to the office. *Pritchett* v. *The People*, 1 Gilm., 525; *The People ex rel* v. *Bangs*, 24 Ill. R., 184; *Mapes* v. *The People*, 69 Ill. R., 523; *Barlow* v. *Standford*, 82 Ill. R., 298; *Trumbo* v. *The People*, 75 Ill. R., 561.

Where a city under a special charter, adopts the general law for the incorporation of cities, and becomes organized under such general law, this will determine the tenure of all offices under the special charter except such as are expressly saved. *People* v. *Brown, Mayor, etc.*, 83 Ill. R., 95.

Where under the law it was made the duty of the president and board of trustees of a town to give at least ten days' notice before the expiration of their term of office, of the time and place for the election of their successors in office; it was held, if they shall neglect to give such notice before the expiration of their term of office, they may lawfully do so at a subsequent time, as they exercise the functions of their office until their successors are elected. *The People* v. *Town of Fairbury*, 51 Ill. R., 149.

At common law, the office of alderman, or other member of a select body, is a franchise for life, though by prescription or charter it may be limited to a definite period. In this country, however, a public office is not considered as being in the nature of a grant or contract, and the officer, as against the public has no freehold or property in the office; and it is almost an invariable provision of law that all officers are elected or appointed for a definite and fixed period. Dillon on Mun Corp., § 175, 157, 158.

The mayor of a city has no judicial power. *Bcesman* v. *City of Peoria*, 16 Ill. R., 484.

A court will take judicial notice of the civil officers in the county in which it holds its sittings. *Thieleman* v. *Burg*, 73 Ill. R., 293.

for the election by the legal voters of the city, or the appointment by the mayor, with the approval of the city council, of a city collector, a city marshal, a city superintendent of streets, a corporation counsel, a city comptroller, or any or either of them, and such other officers as may by said council be deemed necessary or expedient. The city council may, by a like vote, by ordinance or resolution, to take effect at the end of the then fiscal year, discontinue any office so created, and devolve the duties thereof on any other city officer; and no officer, filling any such office so discontinued, shall have any claim against the city on account of his salary, after such discontinuance. The city marshal shall perform such duties as shall be prescribed by the city council for the preservation of the public peace, and the observance and enforcement of the ordinances and laws; he shall possess the power and authority of a constable at common law, and under the statutes of this state.(1)

74. Appointment—Vacancies—Duties—Powers.] § 3. All officers of any city, except where herein otherwise provided, shall be appointed by the mayor (and vacancies in all offices except the mayor and aldermen shall be filled by like appointment) by and with the advice and consent of the city council. The city council may, by ordinance not inconsistent with the provisions of this act, prescribe the duties and define the powers of all such officers together with the term of any such office: *Provided*, the term shall not exceed two years.(2) See § 15-18, 32.

75. Oath—Bond.] § 4. All officers of any city or village, whether elected or appointed, shall, before entering upon the

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(1) **At common law the general duty of all constables,** both high and petty, according to Blackstone, is to keep the king's peace in their several districts, and to that purpose they are armed with very large powers of arresting and imprisoning, of breaking open houses and the like. 1 Bl. Com., 356. As to the power and authority of constables under the statutes of this state, see HAINES' TREATISE, new ed., part IV.

The general duties of constables, under the statutes of this state, is to serve or execute all process issued by justices of the peace.

Where a city, after the election of a marshal, adopted the general law, and organized under it, and created the office of superintendent of police, and required him to perform the duties of marshal, and filled the latter office by appointment, it was held, that the party elected marshal had no further right to the office. *The People* v. *Brown, Mayor, etc.*, 83 Ill. R., 95.

If an officer of a city is unlawfully removed from his office by the city authorities, he has a complete remedy at law, for any fees and emoluments pertaining to the office of which he is deprived. *Delhanty* v. *Warner*, 75 Ill. R. 185.

(2) **A city council authorized to elect certain officers** may, when no mode of election is prescribed, appoint them by resolution, and is not bound to elect them by ballot; and the corporation has full control, unless specially restricted, over all offices and officers existing only under by-laws. Dillon on Mun. Corp., § 151.

Unless authorized by statute, an officer can perform no official act outside of and beyond the territorial limits in which he is authorized and required to act. *VanDusen* v. *The People*, 78 Ill. R., 645.

duties of their respective offices, take and subscribe the following oath or affirmation:

I do solemnly swear (or affirm, as the case may be,) that I will support the constitution of the United States, and the constitution of the State of Illinois, and that I will faithfully discharge the duties of the office of.....according to the best of my ability.

Which oath or affirmation, so subscribed, shall be filed in the office of the clerk. And all such officers, except aldermen and trustees, shall, before entering upon the duties of their respective offices, execute a bond with security, to be approved by the city council or board of trustees, payable to the city or village, in such penal sum as may, by resolution or ordinance, be directed, conditioned for the faithful performance of the duties of the office and the payment of all moneys received by such officer, according to law and the ordinances of such city or village: *Provided, however*, that in no case shall the mayor's bond be fixed at a less sum than three thousand dollars ($3,000); nor shall the treasurer's bond be fixed at a less sum than the amount of the estimated tax and special assessments for the current year—which bonds shall be filed with the clerk (except the bond of the clerk, which shall be filed with the treasurer).(1)

76. Commission—Certificate—Delivery to successors.] § 5. All officers elected or appointed under this act (except the clerk, aldermen and mayor, and trustees,) shall be commissioned by warrant, under the corporate seal, signed by the clerk and the mayor or presiding officer of the city council or board of trustees. The mayor or president of the board of trustees shall issue a certificate of appointment or election, under the seal of the corporation, to the clerk thereof, and any person having been an officer of the city or village, shall, within five days after notification and request, deliver to his successor in office all property, books and effects of every description in his possession, belonging to the city or village, or appertaining to his said office; and upon his refusal to do so, shall be liable for all the damages caused thereby, and to such penalty as may by ordinance be prescribed.(2)

77. Qualification of officers.] § 6. No person shall be eligible

(1) For form of bond, resolution and ordinance under the above section see Div. II, *post*.

The principal is well settled, that official bonds are valid if the condition complies substantially with the requirements of the statute. The exact form prescribed is not essential, unless made so by the charter or act. And when bonds are required by law they are good as common law obligations, though they do not conform to the statute, if they contain no condition contrary to law. Dillon on Mun. Corp., § 155.

(2) For form of warrant certificate and notice under the above section see Div. II, *post*.

The same presumptions which are applicable to individuals are, in general, applicable to acts of corporations. Thus, if a person acts notoriously as the officer of a corporation, and is recognized by it as such officer, a regular appointment will be presumed, and his acts will bind the corporation, although no written proof is or can be adduced of his appointment. Dillon on Mun. Corp., § 152.

to any office who is not a qualified elector of the city or village, and who shall not have resided therein at least one year next preceding his election or appointment, nor shall any person be eligible to any office who is a defaulter to the corporation. [See Rev. Stat., "Officers," ch. 102, § 2, 4.

78. **Not interested in contracts, etc.**] § 7. No officer shall be directly or indirectly interested in any contract, work or business of the city, or the sale of any article, the expense, price or consideration of which is paid from the treasury, or by any assessment levied by any act or ordinance; nor in the purchase of any real estate or other property belonging to the corporation, or which shall be sold for taxes or assessments, or by virtue of legal process at the suit of said corporation. [See Rev. Stat., "Officers," ch. 102, § 3, 4.(1)

79. **Bribery—Penalty.**] § 8. Every person who shall promise, offer or give, or cause, or aid, or abet in causing to be promised, offered or given, or furnish or agree to furnish, in whole or in part, to be promised, offered or given to any member of the city council or board of trustees, or any officer of the corporation, after or before his election or appointment as such officer, any moneys, goods, right in action, or other property or anything of value, or any pecuniary advantage, present or prospective, with intent to influence his vote, opinion, judgment or action on any question,

(1) **The statute has provided, concerning the liability and duty of aldermen** of cities and trustees of villages, and other officers, chapter 102 Revised Statutes, as follows:

Rev. Stat., 727. **"Aldermen of cities—trustees of villages.**] § 2. That it shall be and is hereby declared unlawful for any alderman of any city, or member of the board of trustees of any village of this state, during the term of office for which he is elected, to accept or be appointed to or hold any office, by the appointment of the mayor or president of the board of trustees thereof; and any and all such election or appointment shall be absolutely null and void.

"Not to be interested in contracts—not to act as attorney to procure—bribery.] § 3. It shall not be lawful for any person, now or hereafter holding any office, either by election or appointment, under the constitution of this state, to become in any manner interested, either directly or indirectly, in his own name or in the name of any other person or corporation, in any contract, or the performance of any work in the making or letting of which such officer may be called upon to act or vote. And it shall not be lawful for any such officer to represent, either as agent or otherwise, any person, company or corporation, in respect of any application or bid for any contract or work in regard to which such officer may be called upon to vote. Nor shall any such officer take or receive, or offer to take or receive, either directly or indirectly, any money or other thing of value, as a gift or bribe, or a means of influencing his vote or action in his official character; and any and all contracts made and procured in violation hereof, shall be null and void.

"Penalty.] § 4. Any alderman, member of a board of trustees, supervisor or county commissioner, or person now or hereafter holding any office, either by election or appointment under the constitution of this state, or any law now or hereafter in force in this state, who shall violate any of the provisions of the preceding sections, shall be deemed guilty of a misdemeanor, and on conviction thereof may be punished by confinement in the penitentiary for a term not less than one year nor more than five years, or fined in a sum not less than $200 nor more than $1,000, or both, in the discretion of the court before which such conviction shall be had; and in addition thereto, any office or official position held by any person or persons so convicted shall, by the fact of such conviction, become vacant, and shall be so declared as part of the judgment of court; and the person or persons so convicted shall be disqualified from holding any office or position of trust and confidence in this state for the period of two years from and after the date of such conviction."

matter, cause or proceeding which may be then pending, or may by law be brought before him in his official capacity, shall, upon conviction, be imprisoned in the penitentiary for a term not exceeding two years, or shall be fined not exceeding $5,000, or both, in the discretion of the court. Every officer who shall accept any such gift or promise, or undertaking to make the same under any agreement or understanding that his vote, opinion, judgment or action shall be influenced thereby, or shall be given in any question, matter, cause or proceeding then pending, or which may by law be brought before him in his official capacity, shall, upon conviction, be disqualified from holding any public office, trust or appointment under the city or village, and shall forfeit his office, and shall be punished by imprisonment in the penitentiary not exceeding two years, or by a fine not exceeding $5,000, or both, in the discretion of the court. Every person offending against either of the provisions of this section, shall be a competent witness against any other person offending in the same transaction, and may be compelled to appear and give evidence before any grand jury or in any court in the same manner as other persons; but the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying.(1) [See Rev. Stat., "Crim. Code," ch. 38, § 31, 35.

80. **Mayor, etc., not to hold other office.**] § 9. No mayor, alderman, city clerk, or treasurer, shall hold any other office under the city government during his term of office. [See Rev. Stat., "Officers," ch. 102, § 2, 4.

81. **Duties of clerk.**] § 10. The clerk shall keep the corporate seal, to be provided under the direction of the city council or board of trustees, and all papers belonging to the city or village; he shall attend all meetings of the city council or board of trustees, and keep a full record of its proceedings in the journal; and copies of all papers duly filed in his office, and transcripts from the journals and other records and files of his office, certified by him under the corporate seal, shall be evidence in all courts in like manner as if the originals were produced.

82. **Record of ordinance.**] § 11. The clerk shall record, in a book to be kept for that purpose, all ordinances passed by the city council or board of trustees, and at the foot of the record of each ordinance so recorded shall make a memorandum of the date of the passage and of the publication or posting of such ordinance,

(1) **At common law, bribery is a grave offense** against public justice; and an attempt or offer to bribe is likewise criminal, and is indictable. *Walsh* v. *The People*, 65 Ill. R., 58.

which record and memorandum, or a certified copy thereof, shall be *prima facie* evidence of the passage and legal publication or posting of such ordinances for all purposes whatsoever.(1)

83. Conservators of the peace—Powers.] § 12. The trustees in villages, the mayor, aldermen, and the marshal and his deputies, policemen and watchmen, in cities, if any such be appointed, shall be conservators of the peace; and all officers created conservators of the peace by this act, or authorized by any ordinance, shall have power to arrest, or cause to be arrested, with or without process, all persons who shall break the peace, or be found violating any ordinance of the city or village, or any criminal law of the state, commit for examination, and if necessary, detain such persons in custody over night or Sunday in the watch house, or any other safe place, or until they can be brought before the proper magistrate, and shall have and exercise such other powers, as conservators of the peace, as the city council or board of trustees may prescribe.(2) [See § 21.

(1) For form of certificate by clerk, see Div. II, *post.*

(2) **Police officers are not known to the common law;** they are created by statute, and such an officer has, and can exercise, only such power as he is authorized to do by the legislature, expressly or derivatively. Where police officers are, by statute, invested with all the powers of constables, as conservators of the peace, this gives them authority to arrest on view, intoxicated persons while guilty of disorderly conduct, or other persons violating the laws, and to detain them until they can be brought before a magistrate. Dillon on Mun. Corp., § 149.

If a public officer be resisted and killed by a person whom he is attempting to illegally arrest, without color of authority of law, the killing will be manslaughter only, unless the evidence shows previous or express malice. Where a justice of the peace signs a number of blank warrants, and in his absence a police sergeant fills out one of them and inserts the name of a person as a defendant, such warrant is void, and will not afford even color of justification for the arrest of such person. *Rafferty* v. *The People*, 72 Ill. R., 37.

It is the duty of a police officer, if he knows a felony has been committed in his jurisdiction, and there is good reason to suspect a particular person as a guilty party, to arrest him and take him before a magistrate for examination. But there must be a strong conviction from the circumstances that the party arrested was the felon. *Marsh et al* v. *Smith*, 49 Ill. R., 396.

An arrest without warrant may be made by a city marshal, where the power is given to a city by charter, of any person violating an ordinance in his view. And this in conformity to the general law in relation to the police of the state. *Bryan* v. *Bates*, 15 Ill. R., 87; *Main* v. *McCarty*, Id., 441.

Where authority to arrest on view is not repugnant to the general law of the state, the proper officers of a municipal corporation may authorize an arrest, without warrant or upon view, offenders who violate ordinances in the presence of such officers. *Bryan* v. *Bates*, 15 Ill. R., 87; *Main* v. *McCarty*, 15 Ill. R., 442; Dillon on Mun. Corp., note to § 149.

Where an officer, who is present at the commission of an offense, is not able to make an arrest, and calls in other officers, or the posse, or on hue and cry; those who aid have a justification as broad as his own. *Main* v. *McCarty*, 15 Ill. R., 441.

An arrest for a breach of the peace need not be made immediately, and may be made after peace is restored and the affray over, or upon the information of an officer who was present witnessing it, after the affray was over. *Main* v. *McCarty*, 15 Ill. R., 441.

Where an officer arrested a party who was found, after night, intoxicated, and in a suspicious circumstance as to a trunk, of the value of $25, the fact, whether they were officers legally appointed, could not be tried in this action. *Marsh et al.* v. *Smith*, 49 Ill. R., 396.

Where an officer justifies the commission of an act complained of, which purported to be done in his official capacity, that it is necessary that he should show in his defense, not only that he was acting as officer, duly commissioned and qualified to act as such; while as to all others, it is sufficient for them to show that he was acting as such officer. *Schlencker* v. *Risley*, 3 Scam. R., 483; *Case* v. *Hall*, 21 Ill. R., 632.

84. Compensation of mayor.] § 13. The mayor of any city shall receive such compensation as the city council may by ordinance direct, but his compensation shall not be changed during his term of office. [See § 237.

85. Compensation of aldermen and trustees.] § 14. The aldermen and trustees may receive such compensation for their services as shall be fixed by ordinance: *Provided, however*, such compensation shall not exceed $3 to each alderman or trustee for each meeting of the city council, or board of trustees, actually attended by him, and no other compensation than for attendance upon such meetings shall be allowed to any alderman or trustee for any services whatsoever. Such compensation shall not be changed, after it has been once established, so as to take effect as to any alderman or trustee voting for such change, during his term of office. [See § 237.

86. Compensation of other officers.] § 15. All other officers may receive a salary, fees or other compensation to be fixed by ordinance, and after the same has been once fixed, such fees or compensation shall not be increased or diminished, to take effect during the term for which any such officer was elected or appointed; and every such officer shall make and return to the mayor, or president of the board of trustees, a semi-annual report, verified by affidavit of all such fees and emoluments received by him.(1) [See Rev. Stat., "Fees and Salaries," ch. 53, § 38.

87. Administering oath.] § 16. The mayor of any city, and the clerk of any city or village, shall have power to administer oaths and affirmations upon all lawful occasions.

Police officers, appointed by a city, are not its agents or servants, so as to render it responsible for their unlawful or negligent acts in the discharge of their duties; and accordingly a city is not liable for an assault and battery committed by its police officers, though done in an attempt to enforce an ordinance of the city, nor for an arrest made by them, which is illegal for want of a warrant. Dillon on Mun. Corp., § 773.

The criminal code of the state is made applicable to cities and villages under this act, concerning offenses committed therein. The criminal code in full, and mode of proceeding where offenses have been committed, will be found set forth in HAINES' TREATISE, new edition.

(1) **A person accepting a public office with a fixed salary** is bound to perform the duties of the office for the salary. He cannot legally claim additional compensation for the discharge of those duties, even though subsequently imposed by statute or ordinance, and the salary may be inadequate. *City of Decatur* v. *Vermilion*, 77 Ill. R., 315.

A promise to pay an officer an extra fee or sum beyond that fixed by law is not binding, though he renders services and exercises a degree of diligence greater than could legally have been required of him. *City of Decatur* v. *Vermilion*, 77 Ill. R., 315.

Concerning the compensation of collectors in cities and incorporated towns, the statute concerning fees and salaries has made the following provision:

Rev. Stat., 517. "§ 38. **Collectors in cities or incorporated towns,** in counties of the first and second classes, shall receive such fees as may be prescribed by the common council or board of trustees of their respective cities or incorporated towns, not exceeding in any case two per cent. of the amount collected by them."

Counties of the first and second class includes all counties in the state except Cook county.

ARTICLE VII.

OF FINANCE.

88. Fiscal year.
89. Annual appropriation ordinance.
90. Limitation—emergency—borrowing money.
91. Contracting liabilities limited.
92. Duties of treasurer.
93. Funds kept separate.
94. Receipts.
95. Monthly statements—warrants—vouchers—register.
96. Deposit of funds—separate from his own.
97. Treasurer's annual report—publication.
98. Warrants.
99. Special assessment fund kept separate.

CITY COLLECTOR.

100. His duties.
101. He shall report, etc.—publication.
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CITY COMPTROLLER.

104. His powers and duties.
105. Council may define duties—transfer of clerk's financial duties.
106. Record of bonds issued by city.

GENERAL PROVISIONS.

107. Further duties may be required of officers.
108. Appeal to finance committee.
109. Who may appoint subordinates—liability.
110. Foreign insurance companies—license, etc., penalties.

88. Fiscal year.] § 1. The fiscal year of each city or village organized under this act shall commence at the date established by law for the annual election of municipal officers therein, or at such other times as may be fixed by ordinance.

89. Annual appropriation ordinance.] § 2. The city council of cities, and board of trustees in villages, shall, within the first quarter of each fiscal year, pass an ordinance, to be termed the annual appropriation bill, in which such corporate authorities may appropriate such sum or sums of money as may be deemed necessary to defray all necessary expenses and liabilities of such corporation;

and in such ordinance shall specify the objects and purposes for which such appropriations are made, and the amount appropriated for each object or purpose. No further appropriations shall be made at any other time within such fiscal year, unless the proposition to make each appropriation has been first sanctioned by a majority of the legal voters of such city or village, either by a petition signed by them, or at a general or special election duly called therefor. [See § 245, 253.

90. Limitation—Emergency—Borrowing money.] §3. Neither the city council nor the board of trustees, nor any department or officer of the corporation, shall add to the corporation expenditures in any one year anything over and above the amount provided for in the annual appropriation bill of that year, except as is herein otherwise specially provided; and no expenditure for an improvement to be paid for out of the general fund of the corporation shall exceed, in any one year, the amount provided for such improvement in the annual appropriation bill: *Provided, however*, that nothing herein contained shall prevent the city council or board of trustees from ordering, by a two-thirds vote, any improvement, the necessity of which is caused by any casualty or accident happening after such annual appropriation is made. The city council or board of trustees may, by a like vote, order the mayor or president of the board of trustees and finance committee to borrow a sufficient amount to provide for the expense necessary to be incurred in making any improvements, the necessity of which has arisen as is last above mentioned, for a space of time not exceeding the close of the next fiscal year—which sum, and the interest, shall be added to the amount authorized to be raised in the next general tax levy, and embraced therein. Should any judgment be obtained against the corporation, the mayor, or president of the board of trustees and finance committee, under the sanction of the city council or board of trustees, may borrow a sufficient amount to pay the same, for a space of time not exceeding the close of the next fiscal year—which sum and interest shall, in like manner, be added to the amount authorized to be raised in the general tax levy of the next year, and embraced therein.(1) [See § 245.

(1) **Mandamus will lie to compel a municipal corporation to pay a judgment** rendered against it, there being no other adequate remedy, as an execution cannot be levied upon the property of such corporation. *City of Olney* v. *Harvey et al.*, 50 Ill. R., 453; *Chicago* v. *Hasley*, 25 Ill. R., 595; *McBane* v. *The People*, Id., 503; *The Board, etc.*, v. *Aspinwall*, 24 How. U. S. R., 376; *Supervisors* v. *U. S.*, 4 Wal. U. S. R., 455; *Von Hoffman* v. *Quincy*, 4 Wal. U. S. R., 535; *Galena* v. *Amy*, 5 Id., 507; *Riggs* v. *Johnson County*, 6 Id., 166; *Wakely* v. *Muscatine*, 6 Id., 481.

But a judgment must first be obtained before a mandamus will issue. *Elrod* v. *Town of Bernadotte*, 53 Ill. R., 369; *The People ex rel.* v. *Clark Co.*, 50 Ill. R., 213.

91. Contracting liabilities limited.] § 4. No contract shall be hereafter made by the city council or board of trustees, or any committee or member thereof; and no expense shall be incurred by any of the officers or departments of the corporation, whether the object of the expenditure shall have been ordered by the city council or board of trustees or not, unless an appropriation shall have been previously made concerning such expense, except as herein otherwise expressly provided. [See Rev. Stat., Crim. Code, ch. 38, § 208.

92. Duties of treasurer.] § 5. The treasurer shall receive all moneys belonging to the corporation, and shall keep his books and accounts in such manner as may be prescribed by ordinance, and such books and accounts shall always be subject to the inspection of any member of the city council or board of trustees.

93. Separate accounts.] § 6. He shall keep a separate account of each fund or appropriation, and the debts and credits belonging thereto.

94. Receipts.] § 7. He shall give every person paying money into the treasury a receipt therefor, specifying the date of payment, and upon what account paid; and he shall also file copies of such receipts with the clerk, at the date of his monthly reports.

95. Monthly statements—Warrants—Vouchers—Register.] § 8. The treasurer shall, at the end of each and every month, and oftener if required, render an account to the city council or board of trustees, or such officer as may be designated by ordinance, (under oath,) showing the state of the treasury at the date of such account, and the balance of money in the treasury. He shall also accompany such accounts with a statement of all moneys received into the treasury, and on what account, together with all warrants redeemed and paid by him; which said warrants, with any and all vouchers held by him, shall be delivered to the clerk, and filed with his said account in the clerk's office, upon every day of such settlement. He shall return all warrants paid by him stamped or marked "paid." He shall keep a register of all warrants redeemed and paid, which shall describe such warrants, and show the date,

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A mandamus will not lie to compel a city to levy and collect a tax beyond the limits assigned in its charter for the purpose of paying a judgment recovered against it, yet a city will be compelled to use such available means as are at its disposal under the taxing power. *The People ex rel.* v. *City of Cairo*, 50 Ill. R., 154.

An execution cannot be issued against a municipal corporation, on a judgment for debt or damage recovered against it. *City of Chicago* v. *Hasley*, 25 Ill. R., 595; *City of Olney* v. *Harvey*, 50 Ill. R., 453.

A municipal corporation is not liable to garnishment, no matter what may be the character of its indebtedness. *Merwin* v. *City of Chicago*, 45 Ill. R., 133.

Private property is not liable for the debts of a municipal corporation. On this subject the constitution declares:

"Private property shall not be liable to be taken or sold for the payment of the corporate debts of a municipal corporation." Const. 1870, Art. IX, § 10.

amount, number, the fund from which paid, the name of the person to whom and when paid.

96. Deposit of funds—Separate from his.] § 9. The treasurer may be required to keep all moneys in his hands, belonging to the corporation, in such place or places of deposit as may be designated by ordinance: *Provided, however*, no such ordinance shall be passed by which the custody of such money shall be taken from the treasurer and deposited elsewhere than in some regularly organized bank, nor without a bond to be taken from such bank, in such penal sum and with such security as the city council or board of trustees shall direct and approve, sufficient to save the corporation from any loss; but such penal sum shall not be less than the estimated receipts for the current year from taxes and special assessments levied, or to be levied, by the corporation. The treasurer shall keep all moneys belonging to the corporation in his hands separate and distinct from his own moneys, and he is hereby expressly prohibited from using, either directly or indirectly, the corporation money or warrants in his custody and keeping, for his own use and benefit, or that of any other person or persons whomsoever; and any violation of this provision shall subject him to immediate removal from office by the city council or board of trustees, who are hereby authorized to declare said office vacant; and in which case his successor shall be appointed, who shall hold his office for the remainder of the term unexpired of such officer so removed. [See Rev. Stat., "Crim. Code," ch. 38, § 80, 81.

97. Treasurer's annual report—Publication.] § 10 The treasurer shall report to the city council or board of trustees, as often as required, a full and detailed account of all receipts and expenditures of the corporation, as shown by his books, up to the time of said report; and he shall, annually, between the first and tenth of April, make out and file with the clerk a full and detailed account of all such receipts and expenditures, and of all his transactions, as such treasurer, during the preceding fiscal year, and shall show in such account the state of the treasury at the close of the fiscal year; which account the clerk shall immediately cause to be published in a newspaper printed in such city, if there be one, and if not, then by posting the same in a public place in the clerk's office.

98. Warrants.] § 11. All warrants drawn upon the treasurer must be signed by the mayor and countersigned by the clerk, stating the particular fund or appropriation to which the same is chargeable, and the person to whom payable; and no money shall be otherwise paid than upon such warrants so drawn, except as hereinafter provided.

99. Special assessment funds kept separate.] § 12. All moneys received on any special assessment shall be held by the treasurer as a special fund, to be applied to the payment of the improvement for which the assessment was made, and said money shall be used for no other purpose whatever, unless to reimburse such corporation for money expended for such improvement.

CITY COLLECTOR.

100. His duties.] § 13. It shall be the duty of the collector, when one is appointed, to preserve all warrants which are returned into his hands, and he shall keep such books and his accounts in such manner as the city council may prescribe. Such warrants, books, and all papers pertaining to his office, shall at all times be open to the inspection of and subject to the examination of the mayor, city clerk, any member of the council, or committee, thereof. He shall weekly, and oftener if required by the council, pay over to the treasurer all moneys collected by him from any source whatever, taking such treasurer's receipt therefor, which receipt he shall immediately file with the city clerk; but the city clerk shall, at the time, or on demand, give such tax collector a copy of any such receipt so filed.(1)

101. He shall report, etc.—Publication.] § 14. He shall make a report, in writing, to the council, or any officer designated by the council, of all moneys collected by him, the account whereon collected, or of any other matter in connection with his office, when required by the council or by any ordinance of the city. He shall also, annually, between the first and tenth of April, file with the clerk a statement of all the moneys collected by him during the year, the particular warrant, special assessment or account on which collected, the balance of moneys uncollected on all warrants in his hands, and the balance remaining uncollected at the time of the return on all warrants which he shall have returned, during the preceding fiscal year, to the city clerk. The city clerk shall publish or post the same, as hereinbefore required to be done in regard to the annual report of the treasurer. [See § 97.

102. Not to detain money—Penalty.] § 15. The collector is hereby expressly prohibited from keeping the moneys of the city

(1) **The constitution prohibits the election of a defaulter as collector,** and regulates the fees and compensation of municipal officers in the following provision, of Art. IX.

§ 11. "No person who is in default, as collector or custodian of money or property belonging to a municipal corporation, shall be eligible to any office in or under such corporation. The fees, salary or compensation of no municipal officer who is elected or appointed for a definite term of office, shall be increased or diminished during such term."

in his hands, or in the hands of any person or corporation, to his use, beyond the time which may be prescribed for the payment of the same to the treasurer, and any violation of this provision will subject him to immediate removal from office. [See Rev. Stat., Crim. Code, ch. 38, § 80, 81.

103. Examination of his books—Paying over.] § 16. All the city collectors's papers, books, warrants and vouchers may be examined at any time by the mayor or clerk, or any member of the city council; and the collector shall every two weeks, or oftener if the city council so direct, pay over all money collected by him from any person or persons, or associations, to the treasurer, taking his receipt therefor in duplicate, one of which receipts he shall at once file in the office of the clerk.

CITY COMPTROLLER.

104. His powers and duties.] § 17. The city comptroller (if there shall be any city comptroller appointed, if not, then the clerk) shall exercise a general supervision over all the officers of the corporation charged in any manner with the receipt, collection or disbursement of corporation revenues, and the collection and return of all such revenues into the treasury. He shall have the charge, custody and control of all deeds, leases, warrants, vouchers, books and papers of any kind, the custody and control of which is not herein given to any other officers; and he shall, on or before the fifteenth day of May, in each year, and before the annual appropriations to be made by the city council or the board of trustees, submit to the city council or board of trustees a report of his estimates, as nearly as may be, of moneys necessary to defray the expenses of the corporation during the current fiscal year. He shall, in said report, class the different objects and branches of expenditures, giving, as nearly as may be, the amount required for each; and for the purpose of making such report, he is authorized to require of all officers their statement of the condition and expenses of their respective offices or departments, with any proposed improvements and the probable expense thereof, all contracts made and unfinished, and the amount of any and all unexpended appropriations of the preceding year. He shall, in such report, show the aggregate income of the preceding fiscal year, from all sources, the amount of liabilities outstanding upon which interest is to be paid, the bonds and debts payable during the year, when due and when payable; and in such report he shall give such other information to the council or board of trustees as he may deem necessary, to the end that the city council or board of trustees may fully

understand the money exigencies and demands upon the corporation for the current year.

105. Council may define the duties—Transfer of clerk's financial duties.] § 18. When there shall be appointed in any city a comptroller, the city council may, by ordinance or resolution, confer upon him such powers, and provide for the performance of such duties by him, as the city council shall deem necessary and proper; and all the provisions of this act relating to the duties of city clerk, or the powers of city clerk in connection with the finances, the treasurer and collector, or the receipt and disbursement of the moneys of such city, shall be exercised and performed by such comptroller, if one there shall be appointed; and to that end and purpose, wherever in this act heretofore the word "clerk" is used, it shall be held to mean "comptroller;" and wherever the "clerk's office is referred to, it shall be held to mean "comptroller's office."

106. Record of bonds issued by city.] § 19. The comptroller, when there shall be a comptroller, and if not, then the clerk, shall keep in his office, in a book or books kept expressly for that purpose, a correct list of all the outstanding bonds of the city showing the number and amount of each, for and to whom the said bonds are issued; and when any city bonds are purchased, or paid, or cancelled, said book or books shall show the fact; and in his annual report he shall describe, particularly, the bonds sold during the year, and the terms of sale, with each and every item of expense thereof.

GENERAL PROVISIONS.

107. Further duties may be required.] § 20. The collector and treasurer, and all other officers connected with the receipt and expenditure of money, shall perform such other duties, and be subject to such other rules and regulations as the city council or board of trustees may, from time to time, by ordinance, provide and establish.

108. Appeal to finance committee.] § 21. In the adjustment of the accounts of the collector or treasurer with the clerk (or comptroller if there shall be one), there shall be an appeal to the finance committee of the council or board of trustees, whose decision in all matters of controversy arising between said officers shall be binding, unless the city council or board of trustees shall otherwise direct and provide.

109. Who may appoint subordinates.] § 22. The comptroller

(if there shall be one), the clerk, treasurer and collector, shall, severally, appoint such various clerks and subordinates in their respective offices as the city coucil or board of trustees may authorize, and shall be held, severally, responsible for the fidelity of all persons so appointed by them.

110. Foreign insurance companies—License, etc.—Penalties.] § 23. All corporations, companies or associations not incorporated under the laws of this state, engaged in any city in effecting fire insurance, shall pay to the treasurer the sum of $2 upon the $100 of the net receipts by their agency in such city, and at that rate upon the amount of all premiums which, during the half year ending on every first day of July and January, shall have been received for any insurance effected or agreed to be effected in the city or village, by or with such corporations, companies or associations, respectively. Every person who shall act in any city or village as agent, or otherwise, for or on behalf of any such corporation, company or association, shall, on or before the fifteenth day of July and January, in each year, render to the comptroller (if any there be, if not, to the clerk,) a full, true and just account verified by his oath, of all premiums which, during the half year ending on every first day of July and January preceding such report, shall have been received by him, or any other person for him, in behalf of any such corporation, company or association, and shall specify in said account the amount received for fire insurance. Such agents shall also pay over to the treasurer, at the time of rendering the aforesaid account, the amount of rates for which the company or companies represented by them are severally chargeable by virtue hereof. If such account be not rendered on or before the day hereinbefore designated for that pupose, or if the said rates shall remain unpaid after that day, it shall be unlawful for any corporation, company or association so in default to transact any business of insurance in any such city or village, until the said requisitions shall have been fully complied with; but this provision shall not relieve any company from the payment of any risk that may be taken in violation hereof. Any person or persons violating any of the provisions of this section shall be subject to indictment, and upon conviction thereof, in any court of competent jurisdiction, shall be fined in any sum not exceeding $1,000, or imprisoned not exceeding six months, or both, in the discretion of the court. Said rates may also be recovered of such corporation, company or association, or its agent, by action in the name and for the use of any such city or village, as for money had and received for its use: *Provided*, that this section shall only apply to such cities and villages as have an organized

fire department, or maintain some organization for the prevention of fires.(1) [See Rev. Stat., "Insurance." ch. 73, § 30.

ARTICLE VIII.

OF THE ASSESSMENT AND COLLECTION OF TAXES.

111. Ordinance levying tax.
112. Manner of collecting.
113. Time of paying over.
114. When tax levied for a particular purpose.
115. Tax to be uniform.

111. Ordinance levying tax.] § 1. The city council in cities, and board of trustees in villages, may assess and collect taxes for corporate purposes, in the following manner: The city council or board of trustees, as the case may be, shall, on or before the second Tuesday in *September* (August), in each year, ascertain the total amount of appropriations for all corporate purposes, legally made, and to be collected from the tax levy of that fiscal year, and by ordinance levy and assess such amount, so ascertained, upon the real and personal property within the city or village subject to tax-

(1) **Concerning the net receipts of insurance companies** doing business in municipal corporations, the general insurance law, chapter 73, Revised Statutes, makes the following provision:

Rev. Stat., 630 **"Tax on net receipts.**] § 30. Every agent of any insurance company incorporated by the authority of any other state or government, shall return to the proper officer of the county town or municipality in which the agency is established, in the month of May, annually, the amount of the net receipts of such agency, which shall be entered on the tax lists of the county, town and municipality, and subject to the same rate of taxation for all purposes, state, county, town and municipal, that other personal property is subject to at the place where located, said tax to be in lieu of all town and municipal licenses; and all laws and parts of laws inconsistent herewith are hereby repealed: *Provided*, that the provisions of this section shall not be construed to prohibit cities having an organized fire department from levying a tax or license fee, not exceeding two per cent., in accordance with the provisions of their respective charters, on said gross receipts, to be applied exclusively to the support of the fire department of such city."

An insurance company incorporated under the laws of another state, coming into this state to do business and make profits, may be taxed, and the legislature may rightfully distinguish between such corporations and domestic corporations of the same character, when, in their judgment, the policy and interests of the state demand it. *Ducat* v. *City of Chicago*, 48 Ill. R 172 *Same* v *Same* 10 Wal. U. S. R., 410.

The legislature has the right to provide that foreign insurance companies doing business in Chicago, may be burthened for the benefit of the Chicago Firemen's Benevolent Association, and that the revenue resulting from such burthens, need not be paid into the state treasury. *F. B. Association* v. *Lousberry*, 21 Ill. R., 511.

The right of a corporation created in one state to do business in another, is a right based on comity between the states, and is a voluntary act of the sovereign power; that when contrary to good policy or prejudicial to the interests of the state, ceases to be obligatory. *Ducat* v. *City of Chicago*, 48 Ill. R., 172.

Where a foreign insurance company undertake transact business in this state and fails to comply with the requirements of the law of 1855, and receives from a party insured his promisory note for stock in the company and for premium, the contract is unlawful under the statute and the note absolutely void in the hands of the company, and this notwithstanding the statute imposed a penalty upon the company for doing business in this state in violation of its provisions. *Cin. Mut. H. A. Co.* v. *Rosenthal*, 55 Ill. R., 56.

ation, as the same is assessed for state and county purposes for the current year. A certified copy of such ordinance shall be filed with the county clerk of the proper county, whose duty it shall be to ascertain the rate per cent. which, upon the total valuation of all property subject to taxation within the city or village, as the same is assessed and equalized for state and county purposes, will produce a net amount not less than the amount so directed to be levied and assessed; and it shall be the duty of the county clerk to extend such tax, in a separate column, upon the book or books of the collector or collectors of state and county taxes within such city or village.(1) [See § 114; Rev. Stat., "Revenue," ch. 120, § 122.

(1) **Concerning taxes in municipal corporations, the constitution** makes the following provisions, Art. IX:

"§ 3. The property of the state, counties, and other municipal corporations, both real and personal, and such other property as may be used exclusively for agricultural and horticultural societies, for school, religious, cemetery and charitable purposes, may be exempted from taxation; but such exemption shall be only by general law. In the assessment of real estate incumbered by public easement, any depreciation occasioned by such easement may be deducted in the valuation of such property.

"§ 4. The general assembly shall provide, in all cases where it may be necessary to sell real estate for the non-payment of taxes or special assessments for state, county, municipal or other purposes, that a return of such unpaid taxes or assessments shall be made to some general officer of the county having authority to receive state and county taxes; and there shall be no sale of said property for any of said taxes or assessments but by said officer, upon the order or judgment of some court of record.

"§ 6. The general assembly shall have no power to release or discharge any county, city, township, town or district whatever, or the inhabitants thereof, or the property therein, from their or its proportionate share of taxes to be levied for state purporses, nor shall commutation for such taxes be authorized in any form whatsoever.

"§ 10. The general assembly shall not impose taxes upon municipal corporations, or the inhabitants or property thereof, for corporate purposes, but shall require that all the taxable property within the limits of municipal corporations shall be taxed for the payment of debts contracted under authority of law, such taxes to be uniform in respect to persons and property, within the jurisdiction of the body imposing the same. Private property shall not be liable to be taken or sold for the payment of the corporate debts of a municipal corporation."

For all other corporate purposes, other than local improvements, municipal corporations may be vested with authority to assess and collect taxes; but such taxes are required to be uniform in respect to persons and property within the jurisdiction of the body imposing the same. Const. 1870, Art. IX, § 9.

In giving a construction to the statute empowering towns and other municipal corporations to impose taxes for "corporate purposes," the phrase, "corporate purposes" should not be given so narrow and rigid a construction as to render a self-imposed tax null merely because it might be a debatable question whether it would promote the corporate welfare or not; where such a tax possesses the constitutional quality of uniformity in respect to persons and property, courts should not interfere to annull it, except it be an exceedingly clear case that it is not for a "corporate purpose." A tax for corporate purposes may be defined to mean a tax to be expended in a manner which shall promote the general prosperity and welfare of the municipality which levies it; and if it appear that a tax has been voted and levied with an honest purpose to promote the general well-being of the municipality, and was not designed merely for the benefit of individuals or of a class, its collection should not be stayed by the courts. *Taylor* v. *Thompson*, 42 Ill. R., 9.

To provide a site for a state institution is not such a corporate purpose as would authorize the imposition of an onerous tax on a municipality to pay the expense. *Livingston County* v. *Weider*, 64 Ill. R., 427.

A municipal corporation has no inherent power to levy taxes. It can only levy such as are authorized by law. *Vance* v. *Little Rock*, 30 Ark. R., 435; *Matter of Second Ave. etc. Church*, 66 N. Y. 395.

The state auditor has the rightful authority, under both the old and new constitutions, to levy and certify the taxes of a municipal coaporation to meet the interest on their bonds

112. Manner of collecting.] § 2. The tax so assessed shall be collected and enforced in the same manner and by the same officers as state and county taxes, and shall be paid over by the officers collecting the same to the treasurer of the city or village.(1)

113. Time of paying over.] § 3. It shall be the duty of the officer collecting such tax to settle with and pay over to such treasurer, as often as once in two weeks from the time he shall commence the collection thereof, all such taxes as he shall then have collected, till the whole tax collected shall be paid over. [See Rev. Stat., "Revenue," ch. 120, § 138, 164, 167, 243, 244.

114. When tax levied for particular purpose.] § 4 Whenever any city or village is required to levy a tax for the payment of any particular debt, appropriation or liabillty of the same, the tax for such purpose shall be included in the total amount assessed by the city council or board of trustees, and certified to the county clerk as aforesaid; but the city council or board of trustees shall deter-

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which are duly registered in his office, under the act of April 16, 1869. While it is true that it rests with the citizens or corporate authorities of counties, townships, cities and towns, to determine whether they will incur a debt or levy taxes for corporate purposes, yet the legislature is left free to select the agents who shall impose and collect the tax, when such indebtedness or taxes are voluntarily incurred. *Decker* v. *Hughes*, 68 Ill. R., 33.

The legislature has no power to exempt a city from the payment of state taxes, and impose the entire burden upon the rest of the state. *The People* v. *Barger*, 62 Ill. R., 452; *The People* v. *Lippincott*, 65 Ill. R., 548.

A charter authorizing a tax to be levied in a particular district in the city, is in violation of the constitution. *Primm* v. *City of Belleville*, 59 Ill. R., 142.

The legislature may confer on a city the power to commute for a tax, or to contract for its release for a consideration. *Parmelee* v. *Chicago*, 60 Ill. R., 267.

The act of 1867 taxing the shares of national banks at the place where such banks are located, is constitutional and valid. *First Nat. Bank* v. *Smith*, 65 Ill. R., 44; *Baker* v. *First Nat. Bank*, 67 Ill. R., 297.

The power to levy taxes for general and contingent expenses, or any other expenses not herein otherwise provided for, delegated to a city is sufficiently broad to authorize the levy of a tax thereunder to pay ordinary debts. *Spring* v. *City of Olney*, 78 Ill. R., 101.

The act of April 15, 1873, authorizing incorporated cities to levy taxes annually, not exceeding three per cent., applies to cities incorporated under special charters as well as to those incorporated under the general act, 1872. *Spring* v. *City of Olney*, 78 Ill. R., 101.

The act referred to in the foregoing case, it is understood is in effect repealed. See Hurd's Statutes, 1877, (Legal News ed.,) p. 245.

Those portions of the charter of Chicago authorizing a return of unpaid taxes and assessments to the city collector, and an order of sale of real estate to be made by him, were abrogated by the constitution of 1870. The provisions of the new constitution in this regard went into effect immediately upon the adoption of that instrument. *Hills* v. *City of Chicago*, 60 Ill. R., 86; *Otis* v. *City of Chicago*, 62 Ill. R., 299.

A tax is an exaction made for some general or public object. It is an exaction made for the purpose of carrying on the government, directly or through the medium of municipal corporations, which are but parts of the machinery employed in conducting the operations of the government, and is a charge on an estate which lessens its value. *Trustees Ill. & Mich. Canal et al.* v. *City of Chicago*, 12 Ill. R., 403.

A party of whom a tax is illegally collected, has an ample remedy at law, by an action of trespass against the officer collecting it, or by an action of assumpsit, to recover back the money paid. *Cook County* v. *C. B. & Q. R. R. Co.*, 35 Ill. R., 460.

(1) **The charter of Chicago made a deed for land sold** for non-payment of taxes, *prima facie* evidence of all the proceedings anterior to the judgment and precept. A subsequent law provided that such deeds should not be *prima facie* evidence of the regularity and legality of the prior proceedings. *Held*, not unconstitutional, it neither impairing the obligation of contracts, nor divesting rights. *Robey* v. *City of Chicago*, 64 Ill. R., 447.

mine, in the ordinance making such assessment, what proportion of such total amount shall be applicable to the payment of such particular debt, appropriation or liability; and the city or village treasurer shall set apart such proportion of the tax collected and paid to him for the payment of such particular debt, appropriation or liability, and shall not disburse the same for any other purpose until such debt, appropriation or liability shall have been discharged.

115. Uniformity.] § 5. All taxes levied or assessed by any city or village, except special assessments for local improvements, shall be uniform upon all taxable property and persons within the limits of the city, and no property shall be exempt therefrom other than such property as may be exempt from taxation under the constitution and general laws of the state.(1) [See Const. art. 9, § 9.

ARTICLE IX.

SPECIAL ASSESSMENTS FOR LOCAL IMPROVEMENTS.

116. Powers conferred.
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131. When improvement made by general tax.
132. Special taxation.

SPECIAL ASSESSMENT.

133. How made.
134. Ordinance for—sidewalks—owner's right.
135. Estimate of cost.

(1) **An ommission from taxation of any species** of real or personal property in a city which is in terms or by implication authorized by a statute, so as to destroy the uniformity in respect to persons and property within the jurisdiction of the city is void; but a neglect of the assessors to list any particular property would not vitiate the assessment, but make such officers amenable to the law, for misconduct in office. *Dunham* v. *City of Chicago*, 55 Ill. R., 357.

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167. Supplemental petition to assess benefits in condemnation cases.
168. Adoption of this article.

116. Powers conferred.] § 1. That the corporate authorities of cities and villages are hereby vested with power to make local improvements by special assessment or by special taxation, or both, of contiguous property, or general taxation, or otherwise, as they shall by ordinance prescribe.(1) [See Const., art. 9, § 9; Rev. Stat., "Plats," ch. 109, § 1–10.

(1) **The constitution concerning special assessments** makes the following provision, Art. IX:

"§ 9. The general assembly may vest the corporate authorities of cities, towns and villages with power to make local improvements by special assessment, or by special taxation of contiguous property, or otherwise. For all other corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes; but such taxes shall be uniform in respect to persons and property, within the jurisdiction of the body imposing the same"

In the absence of express statutory authority to levy special assessments upon the real estate of a city, no such power can be implied, from the very nature and purpose of creating such corporate body, nor has a city or its officers, in the absence of express authority, power to tax its property for the purpose of raising revenues for the city. Therefore, when the city of Chicago made a special assessment upon its own property, under which its real estate was sold,

117. Ordinance for improvement.] § 2. When any such city or village shall, by ordinance, provide for the making of any local

it was held, the sale was void, and conferred no title on the purchaser, or right to demand redemption in double amount for which the property was sold. *Taylor* v. *The People*, 66 Ill. R., 322.

The constitution gives the general assembly express authority to invest the corporate authorities of cities, towns and villages with power to make local improvements by special assessments, or by special taxation of contiguous property, or otherwise. *The People* v. *Sherman*, 83 Ill. R., 165.

Under both the constitution and the general law local improvements may be made wholly or in part by special assessments, as the corporate authorities of the municipality may, by ordinance, prescribe. *The People* v. *Sherman*, 83 Ill. R., 165.

The words "special assessment," as used in Sec. 9, Art. 9, of the constitution, mean an assessment upon property specially benefitted, without regard to whether it is contiguous or not, and the words "contiguous property," as used in that section, do not apply to special assessments, but apply to special taxation only. *Guild* v. *City of Chicago*, 82 Ill. R., 472.

Although it would seem that Sec. 1, Art. 9, of the act to provide for the incorporation of cities and villages, in force April 10, 1872, limits the power of corporate authorities to make local improvements by special assessments or by special taxation to contiguous property only, yet, taking the whole article together, it is broad enough to authorize the making of special assessments upon property specially benefitted, without regard to its being contiguous. *Guild* v. *City of Chicago*, 82 Ill. R., 472.

The consolidation of several separate and distinct special assessments against various tracts of land into one proceeding, when reported for confirmation, when each lot of land appears only once in the rolls, does not invalidate the proceeding so as to defeat an application for judgment thereon. Even if this was error it could not be reached in a collateral proceeding. *Prout* v. *The People*, 83 Ill. R., 154.

An ordinance for a connected system of water works for the whole village, provides for but one local improvement, and is not invalid as embracing separate and distinct improvements. *The People* v. *Sherman*, 83 Ill. R., 165.

A separate notice of application for judgment against property for delinquent special assessments from that in respect to the general taxes is not invalid. The notice may embrace both, or separate notices may be given, in the discretion of the collector. *The People* v *Sherman*, 83 Ill. R., 165.

When parties interested appear and contest an application for judgment against their real estate for special assessment, on the merits, it matters not whether the notice of the application is regular, or whether there was any notice at all. *The People* v. *Sherman*, 83 Ill. R., 165.

Property can only be assessed for public improvements on the principle of benefits received by the property from the construction of the work, and the assesment should never exceed the benefits conferred; and it is essential that it should appear, from the proceedings themselves, that such was the principle upon which the assessment was made. *Crawford* v. *The People*, 82 Ill. R., 557.

The general assembly, under the constitution, possesses no power to invest commissioners or juries selected by the county court, with authority to assess and collect taxes or special assessments for the construction of a levee to prevent the overflow of lands. *Updike* v. *Wright*, 81 Ill. R., 49.

Where a street has been ordered to be opened or extended, commissioners for the assessment of damages have been appointed, have made and reported an assessment, which has been accepted and confirmed, a warrant issued for the collection of the amounts assessed for payment of such damages, and such street ordered to be opened, the parties entitled to such damages for property taken, are entitled to a *mandamus*, to compel the city to proceed to collect and pay over the same. *Higgins* v. *City of Chicago*, 18 Ill. R., 276.

The legislature cannot confer upon a city the power to make a valid contract with the owner of any interest in property which should contribute towards the expense of such improvements, which shall have the effect to exempt him from his portion of the burden. *City of Chicago* v. *Baer et al.*, 41 Ill. R., 306.

It was held, under the constitution of 1848, that an assessment for improvements made on the basis of the frontage of lots upon the street to be improved, is invalid, containing neither the element of equality nor uniformity, if assessed under the taxing power, and equally invalid if in the exercise of the right of eminent domain, no compensation being provided. That in public improvements which concern the whole public, there should be assessed to each lot the special benefits it will derive from the improvement, charging such benefit on the lots, the residue of the costs to be paid by equal and uniform taxation. *City of Chicago* v. *Larned*, 34 Ill. R., 203; *Ottawa* v. *Spencer*, 40 Ill. R., 211; *City of Chicago* v. *Baer et al.*, 41 Ill. R., 306; *Bedard* v. *Hall*, 44 Id., 91; *Holbrook* v. *Dickinson*, 46 Id., 285.

improvement, it shall, by the same ordinance, prescribe whether the same shall be made by special assessment or by special taxation of contiguous property, or general taxation, or both.

118. When property is taken, etc.] § 3. Should said ordinance provide for improvements which require the taking or damaging of property the proceeding for making just compensation therefor shall be as follows:

119. Petition. § 4. Whenever any such ordinance shall be passed by the legislative authority of any such city or village, for the making of any improvement mentioned in the first section of this act, or any other local improvement that such city or village is authorized to make, the making of which will require that private property be taken or damaged for public use, such city or village shall file a petition in some court of record of the county in which such city is situated, in the name of the city, praying that "the just compensation to be made for private property to be taken or damaged for the improvement or purpose specified in such ordinance shall be ascertained by a jury." [See Const., art. 2, § 13.

120. Form of petition.] § 5. Such petition shall contain a copy of the said ordinance, certified by the clerk, under the corporate seal; a reasonably accurate description of the lots, parcels of land and property which will be taken or damaged, and the names of the owners and occupants thereof, so far as known to the board or officer filing the petition, and where any known owners are non-residents of the state, stating the fact of such non-residence.(1)

121. Summons—Publication—Notice.] § 6. Upon the filing of the petition aforesaid, a summons, which may be made returnable upon any day in term time, shall be issued and served upon the persons made parties defendant, as in cases in chancery. And in case any of them are unknown, or reside out of this state, the clerk of the court, upon an affidavit being filed showing such fact, shall cause publication to be made in some newspaper printed in his county, or, if there be no newspaper published in his county, then in some newspaper published in this state, containing notice of the pendency of such proceeding, the parties thereto, the title of the court, and the time and place of the return of the summons in the case, and the nature of said proceeding; such publiciation to be made for four weeks consecutively, at least once in each week, the first of which shall be at least thirty days before the return

(1) See form of petition, Div. II, *post*.

day of such summons. Notice so given by publication shall be sufficient to authorize the court to hear and determine the suit, as though all parties had been sued by their proper names and had been personally served.(1) [As amended by act approved and in force March 30, 1874.

122. Hearing—Jury.] § 7. Upon the return of said summons, or as soon thereafter as the business of the court will permit, the said court shall proceed to the hearing of such petition, and shall impanel a jury to ascertain the just compensation to be paid to all of such owners and occupants aforesaid; but if any defendant or party in interest shall demand, or the court shall deem it proper, separate juries may be impaneled as to the compensation or damages to be paid to any one or more of such defendants or parties in interest. [As amended by act approved and in force March 30, 1874.

123. Jury to ascertain compensation—Admitting other parties.] § 8. Such jury shall also ascertain the just compensation to be paid to any person claiming an interest in any lot, parcel of land or property which may be taken or damaged by such improvement, whether or not such person's name, or such lot, parcel of land, or other property, is mentioned or described in such petition: *Provided*, such person shall first be admitted as a party defendant to said suit by such court, and shall file a statement of his interest in and description of the lot, parcel of land, or other property in respect to which he claims compensation.

124. Viewing premises—Ownership, etc.] § 9. The court may, upon the motion of such city or village, or of any person claiming any such compensation, direct that said jury (under the charge of an officer of the court) shall view the premises which it is claimed by any party to said proceeding will be taken or damaged by said improvement, and in any case, where there is no satisfactory evidence given to the jury as to the ownership of, or as to the extent of the interest of any defendant in the property to be taken or damaged, the jury may return their verdict as to the compensation or damage to be paid for the property or part of property to be taken or damaged, and for the entire interests therein. [As amended by act approved and in force March 30, 1874.

125. Judgment—New parties—Further proceedings.] § 10. Upon the return of such verdict, the court shall order the same to be recorded, and shall enter such judgment or decree thereon

(1) See forms, Div. II, *post*.

as the nature of the case may require. The court shall continue or adjourn the cause from time to time, as to all occupants and owners named in such petition who shall not have been served with process, or brought in by publication, and shall order a new summons to issue and new publication to be made; and upon such occupants or owners being brought into court, shall impanel a jury to ascertain the compensation so to be paid to such defendant or defendants, for private property taken or damaged; and like proceeding shall be had for such purpose as hereinbefore provided for the ascertaining of compensation to other owners.

126. Powers of court.] § 11. The court shall have power, at any time, upon proof that any such owner or owners named in such petition, who has not been served with process, has ceased to be such owner or owners since the filing of such petition, to impanel a jury and ascertain the just compensation to be made for the property (or the damage thereto) which had been owned by the person or persons so ceasing to own the same; and the court may, upon any finding or findings of any jury or juries, or at any time during the course of such proceedings, enter such order, rule, judgment or decree as the nature of the case may require.

127. Ownership—Further powers of court.] § 12. No delay in making an assessment of compensation shall be occasioned by any doubt or contest which may arise as to the ownership of the property, or any part thereof, or as to the interests of the respective owners or claimants, but in such case the court may impanel a jury and ascertain the entire compensation or damage that should be paid for the property, or part of property, and the entire interests of all parties therein, and may require adverse claimants to interplead so as to fully determine their rights and interests in the compensation so ascertained. And the court may make such order as may be necessary in regard to the deposit or payment of such compensation.

128. Persons under disability.] § 13. When it shall appear, from said petition or otherwise, at any time during the proceedings upon such petition, that any infant, or insane or distracted person, is interested in any property that is to be taken or damaged, the court shall appoint a guardian, *ad litem*, for such infant or insane or distracted person, to appear and defend for him, her or them; and the court shall make such order or decree as it shall deem proper to protect and secure the interest of such infant, or insane or distracted person, in such property, or the compensation which shall be awarded therefor.

129. Judgment—Effect—Appeal, etc.] § 14. Any final judgment or judgments, rendered by said court, upon any finding or

findings of any jury or juries, shall be a lawful and sufficient condemnation of the land or property to be taken upon the payment of the amount of such finding as hereinafter provided. It shall be final and conclusive as to the damages caused by such improvement, unless such judgment or judgments shall be appealed from; but no appeal or writ of error upon the same shall delay proceedings under said ordinance, if such city or village shall deposit, as directed by the court, the amount of the judgment and costs, and shall file a bond in the court in which such judgment was rendered, in a sum to be fixed and with security to be approved by the judge of said court, which shall secure the payment of any future compensation which may at any time be finally awarded to such party so appealing or suing out such writ of error, and his or her costs.(1)

130. Order for possession.] § 15. The court, upon proof that said just compensation so found by the jury has been paid to the person entitled thereto, or has been deposited as directed by the court (and bond given, in case of any appeal or writ of error), shall enter an order that the city or village shall have the right, at any time thereafter, to take possession of or damage the property, in respect to which such compensation shall have been so paid or deposited, as aforesaid.

131. When improvement made by general tax.] § 16. When the ordinance under which said improvement is ordered to be made shall provide that such improvement shall be made by general taxation, the cost of such improvement shall be added to the general appropriation bill of such city or village, and shall be levied and collected with and as a part of the general taxes of such city or village.

132. Special taxation.] § 17. When said ordinanance under which said local improvement shall be ordered shall provide that

(1) **An action on the case will lie against a city** for damages arising from a breach of duty imposed by law, such as a failure to collect an assessment levied for payment of damages sustained by reason of opening a street. *Clayburgh* v. *Chicago*, 25 Ill. R.. 535.

A proceeding to condemn real estate for public use may be abandoned at any time after damages assessed and before payment thereof, or its deposit for the owner, when property remains unmolested, and *mandamus* will not lie to compel the payment of the compensation. *City of Chicago* v. *Barbian*, 80 Ill. R., 482.

If property in a condemnation proceeding is taken or damaged by the owners consent, before compensation is made, the owner will have a vested right in the compensation when ascertained. *City of Chicayo* v. *Barbian*, 80 Ill. R., 482.

When land is condemned for public use, and the condition of the order is not complied with in a reasonable time by the payment of the damages and taking possession of the property, the proceedings will be regarded as abandoned. *City of Chicago* v. *Barbian*, 80, Ill. R., 482.

A proceeding to condemn real estate for public use may be abandoned at any time after the damages are assessed, and before payment thereof or its deposit for the owner, when the property has remained unmolested. *City of Chicago* v. *Barbian*, 80 Ill. R., 482.

such improvement shall be made by special taxation of contiguous property, the same shall be levied, assessed and collected in the way provided in the sections of this act providing for the mode of making, levying, assessing and collecting special assessments.(1)

SPECIAL ASSESSMENT.

133. How made. § 18. When the ordinance under which said local improvement is ordered to be made shall provide that such improvement shall be wholly or in part made by special assessment, the proceedings for the making such special assesment shall be in accordance with the sections of this *act* [article] from 18 to 51, inclusive.

134. Ordinance for—Sidewalks—Owner's rights.] § 19. Whenever such local improvements are to be made wholly or in part by special assessment, the said council in cities, or board of trustees, in villages, shall pass an ordinance to that effect, specifying therein the nature, character, locality and description of such improvement: *Provided*, that whenever any such ordinance shall provide only for the building or renewing of any sidewalk, the owner of any lot or piece of land fronting on such sidewalk shall be allowed fifteen days after the time at which such ordinance shall take effect in which to build or renew such sidewalk opposite his land, and thereby relieve the same from assessment: *Provided*, that the work so to be done shall in all respects conform to the requirements of such ordinance.

135. Estimate of cost.] § 20. The city council or board of trustees shall appoint three of its members, or any other three competent persons, who shall make an estimate of the cost of the improvement contemplated by such ordinance, including labor, materials, and all other expenses attending the same, and the cost of making and levying the assessment, and shall report the same in writing to said council or board of trustees.

136. Order for proceedings in court.] § 21. On such report being made, and approved by the council or board of trustees, as the case may be, it may order a petition to be filed by such officer

(1) **The rule seems to be well settled,** that corporations and incorporated companies, may be sued in that character, for damages arising from a breach by them of a duty imposed by law. 1 Chit. Pl. 77; *Mayor of Lynn* v. *Turner*, Cowp., 86.

Where a city has appropriated a private property for widening or extending a street, and assessed and allowed the damages, but has neglected and wilfully refused to cause the assessments of benefits to some owners of adjoining property to be collected, such owners of land taken would have a right of action against the city for not complying with the law, the same being a public duty, a right to sue in assumpsit for the value of the land taken or in trespass or case for the tort. *Clayburgh* v. *City of Chicago*, 25 Ill. R., 535.

as it shall direct, in the county court of its county, for proceedings to assess the cost of such improvement in the manner provided in this act.

137. Petition to court.] § 22. The petition shall be in the name of the corporation, and shall recite the ordinance for the proposed improvement and the report of such commission, and shall pray that the cost of such improvement may be assessed in the manner prescribed by law.

138. Appointment of commissioners—Oath.] § 23. Upon the filing of such petition the court shall appoint three competent persons as commissioners, who shall take and subscribe an oath, in substance, as follows, to-wit:

STATE OF ILLINOIS, } ss.
.....*County.* }

We, the undersigned, commissioners, appointed by the county court of.....county, to assess the cost of . . . (here state in general terms the improvement), do solemnly swear (or affirm, as the case may be) that we will a true and impartial assessment make of the cost of said improvement upon the city (or village) of ....., and the property benefitted by such improvement, to the best of our ability, and according to law.

139. Duty of Commissioners.] § 24. It shall be the duty of such commissioners to examine the locality where the improvement is proposed to be made, and the lots, blocks, tracts and parcels of land that will be specially benefitted thereby, and to estimate what proportion of the total cost of such improvement will be of benefit to the public, and what proportion thereof will be of benefit to the property to be benefitted, and apportion the same between the city or village and such property, so that each shall bear its relative equitable proportion; and having found said amounts, to apportion and assess the amount so found to be of benefit to the property upon the several lots, blocks, tracts and parcels of land in the propertion in which they will be severally benefitted by such improvement: *Provided*, that no lot, block, tract or parcels of land shall be assessed a greater amount than it will be actually benefitted: *And, provided, further*, that it shall not be necessary for said commissioners to examine the locality except where the ordinance provides for the opening, widening or improvement of streets and alleys.(1) [As amended by act approved and in force March 30, 1874.

[§ 25 repealed by an act approved April 25, 1873.]

(1) **The power of corporate authorities of cities and villages is limited** by section 1, of article 9, of the general incorporation act of 1872, to making local improvements by special assessment or by special taxation to contiguous property only, yet taking the whole article together, it is broad enough to authorize the making of special assessments upon property specially benefitted, without regard to its being contiguous. *Guild* v. *City of Chicago*, 82 Ill. R., 472.

A special assessment is a charge imposed upon real estate for a special purpose, and not for a general or public object, and it is not a charge on an estate which reduces it in value. *Trustees, etc.*, v. *Chicago*, 12 Ill. R., 403; *Peoria* v. *Kidder*, 26 Ill. R., 357.

140. Assessment roll—Return.] § 26. They shall also make or cause to be made an assessment roll, in which shall appear the names of the owners, so far as known, a description of each lot, block, tract or parcel of land, and the amount assessed as special benefits thereto, and in which they shall set down as against the city or village the amount they shall have found as public benefit, and certify such assessment roll to the court by which they were

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The public property of the state, counties and municipal corporations is liable to assessment for public taxes or special assessments for public improvements. It is a mere question of policy. *Higgins* v. *City of Chicago*, 18 Ill. R., 281.

Real estate owned by a municipal corporation is not exempted from its proper share of the burden of constructing public improvements. *Scammon* v. *City of Chicago*, 42 Ill. R., 192.

A street railway company, occupying a portion of a street with their track and in the use thereof, under a charter, and a contract with the city authorities, have a franchise and right of occupancy which is a property of a character to be substantially benefitted by the paving of such street; and in proportion as it is thus benefitted it should contribute its share to the cost of the improvement, in common with the other property upon the street. *City of Chicago* v. *Baer et al.*, 41 Ill. R., 306.

Church property may be assessed for special purposes, though not liable for ordinary taxes. *City of Ottawa* v. *Trustees, etc.*, 20 Ill. R., 423.

An assessment paid to the city of Chicago for the purpose of opening a street under its former charter, it was held might be recovered from the city, if the street shall not be opened within a reasonable time; and any period of time which would bar the recovery, if the action should be delayed, will be considered reasonable. *Bradford* v. *City of Chicago*, 25 Ill. R., 411.

Upon a special assessment for grading, paving and curbing a street, it appeared the curbing had been done some years previously, and was adopted by the city, and in making this improvement, no new curbing having been made. *Held*, the city could not collect an assessment for work it never performed. *Daraithy* v. *City of Chicago*, 53 Ill. R , 79.

Where a special assessment was made, and lands sold to pay the same, and a certificate of purchase issued to a party, and the owner had, before the purchase received a deed, enjoined the city and its officers from making the projected improvement, and had the sale declared void and order for the purchaser to surrender his certificate; held, the purchaser was entitled to recover his money, so paid, from the city. *Wells* v. *City of Chicago*, 66 Ill. R., 280.

Money which has been voluntarily paid on a judgment cannot be recovered back, even though the judgment was void, when the payment was made with a full knowledge of all the facts and circumstances of the case, and in ignorance only of the parties legal rights. *Elston* v. *City of Chicago*, 40 Ill. R., 514.

Where a party has voluntarily paid a special assessment, and the fact that others have failed to pay it, or that the municipal authorities have abandoned the collection of other assessments, will not aid a party who has paid, to recover back his money. *Falls* v. *City of Cairo*, 58 Ill. R., 403.

Owners of property having paid assessments which are subsequently set aside, cannot recover them back, such payments being deemed in law voluntary. *Union Building Association* v. *City of Chicago*, 61 Ill. R., 439.

Where a party paid taxes illegally assessed, and the only compulsion was that the land was liable for sale under a void judgment, which could not pass title, the payment could not be regarded as made under duress, and an action for money had and received will not lie against the county treasurer, to whom taxes were paid, to recover them back. *Swanston* v. *Ijams*, 63 Ill. R., 165.

The judgment of the commissioners of the board of public works, of the city of Chicago, as to what property shall be included and what shall be omitted, in the assessment of special benefits to be derived from a contemplated improvement, cannot be questioned except for fraud. It cannot be overthrown by testimony of other persons, that property benefitted by the proposed improvement was not assessed. *Elliott* v. *City of Chicago*, 48 Ill. R., 293; *City of Chicago* v. *Burtice et al.*, 24 Id., 489.

Where an ordinance of the city of LaSalle, prescribed the manner of assessing property for taxation in the city, provided that the assessment should be completed and returned to the city clerk's office by a certain day, and that the clerk should give notice that the objections would be heard by the city council on a day designated in the ordinance, it was held that the requirement to return an assessment by a certain day was not simply directory to the assessor, but was mandatory, and its performance indispensable to the validity of the assessment. *Sanderson* v. *City of LaSalle*, 57 Ill. R., 441.

appointed, at teast ten days before the first day of the term at which a final hearing thereon shall be had. [As amended by act approved and in force March 30, 1874.

141. Notice by mail, posting and publication.] § 27. It shall also be the duty of such commissioners to give notice of such assessment, and of the term of court at which a final hearing thereon will be had, in the following manner:

First—They shall send by mail to each owner of premises assessed, whose name and place of residence is known to them, a notice, substantially in the following form:

Mr..... Your (here give a short description of the the premises), is assessed $.... for public improvement. The assessment roll will be returned to the....term of the county court of ..... county.

.....

(Here give date.) ....

.....

Commissioners.

Second—They shall cause at least ten days' notice to be given, by posting notices in at least four public places in such city or village, two of which shall be in the neighborhood of such proposed improvement; and when a daily newspaper is published in such city or village, by publishing the same at least five successive days in such daily newspaper, or if no daily newspaper is published in such city or village, and a weekly newspaper is published therein, then at least once in each week, for two successive weeks, in such weekly newspaper, or if no daily or weekly newspaper is published in such city or village, then in a newspaper published in the county in which such city or village is situated. The notice may be substantially as follows:(1)

SPECIAL ASSESSMENT NOTICE.

Notice is hereby given to all persons interested, that the city council (or board of trustees, as the case may be,) of ....., having ordered that (here insert the description and nature of improvements substantially as in ordinance) have applied to the county court of ..... county for an assessment of the costs of said improvements, according to benefits; and an asssessment thereof having been made and returned to said court, the final hearing thereon will be had at the ..... term of said court, commencing on the ..... day of ...., A. D. 18.... All persons desiring may then and there appear and make their defense.

....

(Here give date.) .....

.....

Commissioners.

[As amended by act act approved April 25, 1873; in force July 1, 1873.

(1) **A notice to parties interested in property assessed, which conforms** to the law under which the city is incorporated and to the city ordinance in that regard, will be sufficient, although it is general, to "all parties interesested" to attend and make their objections to the confirmation of the assessment. *City of Ottawa* v. *Macy*, 20 Ill. R., 413.

Where a notice is given of an application for the confirmation of a special assessment fo. opening or extending a street between two given points, there is no authority for

142. Proof of notice.] § 28. On or before the final hearing, the affidavit of one or more of the commissioners shall be filed in said court, stating that they have sent or caused to be sent by mail, to the owners whose premises have been assessed, and whose name and place of residence are known to them, the notice hereinbefore required to be sent by mail to owners of premises assessed. They shall also cause to be filed the affidavit of the person who shall have posted the notices required by this act to be posted, setting forth when and in what manner the same were posted. Such affidavits shall be received as *prima facie* evidence of a compliance with this act in regard to giving such notices. They shall also file a certificate of publication of said notice in like manner as is required in other cases of publication of notices. [As amended by act approved April 25, 1873; in force July 1, 1873.

143. Continuance when notice not in time.] § 29. If ten days shall not have elapsed between the first publication or the putting up of such notices and the first day of the next term of such court, the hearing shall be continued until the next term of court.

144. Objections—Judgment by default. § 30. Any person interested in any real estate to be affected by such assessment, may appear and file objections to such report, and the court may make such order in regard to the time of filing such objections as may be made in cases at law in regard to the time of filing pleas. As to all lots, blocks, tracts and parcels of land to the assessment of which objections are not filed within the time ordered by the court, default may be entered, and the assessment confirmed by the court.(1)

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making an assessment for opening or extending the street beyond or outside of the points named in the notice. *Owen* v. *City of Chicogo*, 53 Ill. R., 95.

Where the collector's report showed that the notice was published ten days, it was taken to mean secular days, and his affidavit appended to his report is *prima facie* evidence of the fact. *Jenks et al.* v. *Chicago*, 48 Ill. R., 296.

If a party, having notice, fails to present his objections, he must be held to waived all irregularities. *Ottawa* v. *C. & R. I. R. R. Co.*, 25 Ill. R.. 43; *Jenks et al.* v. *Chicago*, 48 Ill. R., 296.

Objection that the assessment was not made in conformity with the statute, or within the rule prescribed, should be made at the first opportunity. *Jenks et al.* v. *Chicago*, 48 Ill. R., 296.

(1) **It is a settled rule, that summary proceeding, as an application** for judgment against land or lots of ground upon a special assessment roll, by which a man's property may be taken from him without his consent, and where there is no personal service of process; must be strictly pursued, and this must be shown on the face of the proceedings. So, where application was made for a judgment against land and lots, upon unpaid assessments for the grading, paving and macadamizing of certain streets in the city of Chicago, objections were made to the assessment roll because it did not show damages as well as benefits to the property owners, resulting from the proposed improvements, and the objection was held to be fatal to the application. *City of Chicago* v. *Wright*, 32 Ill. R., 192.

145. Hearing—Jury.] § 31. On the hearing, the report of the commissioners shall be competent evidence, and either party may introduce such other evidence as may tend to establish the right of the matter. The hearing shall be conducted as in other cases at law, and if it shall appear that the premises of the objector are assessed more or less than they will be benefitted, or more or less than their peoportionate share of the cost of the improvement, the jury shall so find, and also find the amount for which such premises ought to be assessed, and judgment shall be rendered accordingly.

146. Precedence.] § 32. The hearing in all cases arising under this act shall have precedence over all other cases in such court, except criminal cases.

147. Court may modify, etc., the assessment.] § 33. The court before which any such proceeding may be pending, shall have authority, at any time before final *adjournment* [judgment], to modify, alter, change, annul or confirm any assessment returned, as aforesaid, or cause any such assessment to be recast by the same commissioners whenever it shall be necessary for the attainment of justice, or may appoint other commissioners in the place of all or any of the commissioners first appointed, for the purpose of making such assessment or modifying, altering, changing or recasting the same, and may take all such proceedings and make all such orders as may be necessary to make a true and just assessment of the cost of such improvement according to the princi-

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It is too late, on application for judgment upon a special assessment, to show that the proposed improvement was private and not public. The objections must be made before the assessment is confirmed, where the party has notice of the application for confirmation. *Lehmer* v. *The People ex rel.*, 80 Ill. R., 601,

Amendments may be made to assessment rolls, where they are mere clerical and do not affect a party's rights or interests. *Lehmer* v. *People ex rel.*, 80 Ill. R., 601.

All defects appearing on the face of the proceedings in a special assessment, which go to show that the requirements of the law have not been observed, and therefore, that the court had no legal right to render the judgment, can be urged on appeal or error, notwithstanding a party failed to avail himself of them before the common council. *City of Chicago* v. *Wright*, 32 Ill. R., 192.

Where, by the charter of a city, ample opportunity was given to make objections to an assessment before the city council, on the return by the commissioners of the assessment, if a party lies by, having notice, and fails to present his objections to the city council, he must be held in a court of equity to have waived all irregularities, and cannot in that court have a hearing which he failed to avail of at law. *City of Ottawa* v. *Chicago & Rock Island R. R. Co.*, 25 Ill. R., 43; *Jenks* v. *City of Chicago*, 48 Ill. R., 296.

The common council of the city of Ottawa is not bound to decide upon the confirmation of an assesment, on the day fixed for that purpose, by the notice given. The day named was for hearing objections; deliberation may be necessary. *City of Ottawa* v. *Fisher*, 20 Ill. R., 422.

Where the park commissioners of South Park, in Cook county, made an assessment upon property contiguous to the park, for benefits, and returned the same to the circuit court, where the same was found valid and confirmed and divided into yearly instalments, it was held that confirmation of the assessment by the circuit court was *res adjudicata* as to the validity and legality of the assessment and levy, and precluded any investigation of the matters so decided. *The People ex rel.* v. *Brislin*, 80 Ill. R., 423; *Lehmer* v. *People ex rel.*, 80 Ill. R., 601.

ples of this act, and may from time to time as may be necessary, continue the application for that purpose as to the whole or any part of the premises.

148. Judgment several—Appeal, etc.—Lien.] § 34. The judgment of the court shall have the effect of a several judgment as to each tract or parcel of land assessed, and any appeal from such judgment or writ of error shall not invalidate or delay the judgment, except as to the property concerning which the appeal or writ of error is taken. Such judgment shall be a lien upon the property assessed, from the date thereof until payment shall be made.

149. Judgment certified to city clerk—Filing—Warrant.] § 35. The clerk of the court in which such judgment is rendered shall certify the assessment roll and judgment to the clerk of such city or village, or if there has been an appeal or writ of error taken on any part of such judgment, then he shall certify such part of the judgment as is not included in such appeal or writ of error. The clerk of the city or village shall file such certificate in his office, and issue a warrant for the collection of such assessment.

150. Form of Warrant.] § 36. The warrant in all cases of assessment under this act shall contain a copy of such certificate of the judgment, describing the lots, blocks, tracts or parcels of land assessed, and the respective amounts assessed on each lot, block, tract or parcel of land, and shall be delivered to the officer authorized to collect such special assessments. Such warrant shall give sufficient authority to collect the assessments therein specified.

151. Collector's notice—Form of.] § 37. The collector receiving such warrant shall immediately give notice thereof by publishing such notice in one or more newspapers in such city or village, if such newspaper is there; and if there is no such newspaper, then by posting four copies thereof in public places along the line of the proposed improvement. Such notice may be substantially in the following form:

SPECIAL ASSESSMENT NOTICE. SPECIAL WARRANT NO. —.

Public notice is hereby given that the (here insert title of court) has rendered judgment for a special assessment upon property benefited by the following improvement (here insert the character and location of the improvement in general terms) as will more fully appear from the certified copy of the judgment on file in the office of the clerk of the city (or village) of .....; that a warrant for the collection of such assessments is in the hands of the undersigned. All persons interested are hereby notified to call and pay the amounts assessed, at the collector's office, (here insert location of office) within thirty days from the date hereof.

Dated this .... day of ....., A. D. 18..

....., *Collector.*

152. Manner of collecting—Entry of payment.] § 38. It shall be the duty of the collector into whose hands the warrant shall so come, as far as practicable to call upon all persons resident within

the corporation whose names appear on the assessment roll, or the occupants of the property assessed, and personally, or by written or printed notice left at his or her usual place of abode, inform them of such assessment, and request payment of the same. Any such collector ommitting so to do shall be liable to a penalty of $10 for every such omission, but the validity of the special assessment, or the right to apply for and obtain judgment for any such special [assessment,] shall not be affected by such ommission. It shall be the duty of such collector to write the word "paid" opposite each tract or lot on which the assessment is paid, together with the name and post office address of the person making the payment, and date of payment.

153. Report of delinquent list to county collector—Evidence—Defense.] § 39. It shall be the duty of the collector of special assessments, within such time as the city council or board of trustees may by ordinance provide, to make a report in writing—to the general officer of the county authorized, or to be designated by the general revenue law of this state, to apply for judgment and sell lands for taxes due the county and state—of all the lands, town lots and real property on which he shall have been unable to collect special assessments, with the amount of special assessments due and unpaid thereon, together with his warrant, or with a brief description of the nature of the warrant or warrants received by him authorizing the collection thereof; which report shall be accompanied with the oath of the collector that the list is a correct return and report of the lands, town lots and real property on which the special assessments levied by authority of the city of ..... (or village of ....., as the case may be,) remain due and unpaid; that he is unable to collect the same or any part thereof, and that he has given the notice required by law that said warrants had been received by him for collection. Said report, when so made, shall be *prima facie* evidence that all the forms and requirements of the law in relation to making said return have been complied with, and that the special assessments mentioned in said report are due and unpaid. And, upon the application for judgment upon such assessment, no defense or objection shall be made or heard which might have been interposed in the proceeding for the making of such assessment, or the application for the confirmation thereof.(1)

154. Application for Judgment—What laws govern.] § 40. When said general officer shall receive the report provided for in

(1) **Where a collector makes return that he is unable to collect** the amount assessed, or any part thereof, his return will be conclusive of the facts stated. If the return is false he officer is liable thereon. *City of Ottawa* v. *Macy*, 20 Ill. R., 413.

the preceding section, he shall at once proceed to obtain judgment against said lots, parcels of land and property for said special assessments remaining due and unpaid, in the same manner as is or may be by law provided for obtaining judgment against lands for taxes due and unpaid the county and state; and shall in the same manner proceed to sell the same for the said special assessments remaining due and unpaid. In obtaining said judgment and making said sale, the said officer shall be governed by the general revenue laws of this state, except when otherwise provided herein. [See Rev. Stat., "Revenue," ch. 120, § 182, *seq.*

155. Return of sales—Redemption.] § 41. After making said sales, the list of lots, parcels of land and property sold thereat shall be returned to the office of the county clerk, and redemption may be made as provided for by the general revenue law of this state. [See Rev. Stat., "Revenue," ch. 120, § 210–215.

156. Penalty when lands paid are sold for tax, etc.] § 42. If the collector shall receive any moneys for taxes or assessments, giving a receipt therefor for any land or parcel of land, and afterwards return the same as unpaid to the state officers authorized to sell lands for taxes, or shall receive the same after making such return, and the same be sold for tax or assessment which has been so paid and receipted for by himself or his clerks, he and his bond shall be liable to the holder of the certificate given to the purchasers at the sale, for double the amount of the face of the certificate, to be demanded in two years from the date of the sale, and recovered in any court having jurisdiction of the amount; and the city or village shall, in no case, be liable to the holder of such certificate.

157. Paying over—Compensation.] § 43. The collector or collectors, and the general officer aforesaid, to whom the said warrant shall be returned, shall pay over to the city or village treasurer to which it shall belong all moneys collected by them, respectively, upon or by virtue of such warrant, or upon any sale for taxes or otherwise, at such time or times, and in such manner as shall be prescribed by ordinance, and shall be allowed such compensation for their services in the collection of such assessment as the ordinances of the city or village may provide, except when such compensation is fixed by general law.

158. General revenue laws apply.] § 44. The general revenue laws of this state, in reference to proceedings to recover judgments for delinquent taxes, the sale of property thereon, the execution of certificates of sale and deeds thereon, the force and effect of such sales and deeds, and all other laws in relation to the enforcement and collection of taxes and redemption from tax sales, except as

herein otherwise provided, shall be applicable to proceedings to collect such special assessment.(1) [See Rev. Stat., "Revenue," ch. 120, § 199–225.

159. City or village may buy in.] § 45. Any city or village interested in the collection of any tax or special assessment, may

(1) See HAINES' TOWNSHIP ORGANIZATION LAWS, Title "Revenues," where the law and decisions on the subject of assessment and collection of taxes will be found.

Concerning the mode of perfecting the levy of taxes in cities and villages, the general revenue law of the state makes the following provision:

Rev. Stat., 878. **"Certificate of rates.**] § 122. The proper authorities of towns, townships, district and incorporated cities, towns and villages, collecting taxes under the provisions of this act, shall annually, on or before the second Tuesday in August, certify to the county clerk the several amounts which they severally require to be raised by taxation, anything in their respective charters, or in acts heretofore passed by the general assembly of this state, to the contrary notwithstanding. [As amended by act approved May 3, 1873."

If the certificate of the amount of municipal taxes is not filed with the county clerk within the time required by the statute. this will not invalidate the levy, as the irregularity or defect is cured by § 191 of the present revenue law. *Chinequy* v. *The People ex rel. Swigert*, 78 Ill. R., 570.

If a party intends to urge that a portion of the taxes levied are unconstitutional and void, he must make the specific objection in the court below and preserve the evidence of the facts in the record. *Chinequy* v. *The People ex rel. Swigert*, 78 Ill. R., 570.

The supreme court say that by the adoption of section 191 of the present revenue law, nearly if not all the previous decisions of this court in regard to informalities and irregularities in the proceedings of any of the officers connected with the assessment, levying or collecting of the taxes, not affecting the substantial justice of the tax itself, have been abrogated as rules for the determination of cases arising after the adoption of such section, and courts can now only look to objections which affect the substantial justice of the tax. *Thatcher* v. *The People ex rel.*, 79 Ill. R., 597.

If a notice of application for judgment against delinquent lands designates the years for which the taxes are unpaid, with such certainty that any one reading the notice would have no difficulty in determining for what year or years taxes on any particular tract or lot were delinquent, the purpose of the statute in requiring notice is subserved. *Fisher* v. *The People*, 84 Ill. R., 491.

A certificate of a publisher of a newspaper, sworn to, showing a state of facts which meets the requirements of the law as to the publication of notice of an application for judgment for taxes against delinquent lands, is sufficient, though it may not be in the precise words of the statute. *Fisher* v. *The People*, 84 Ill. R., 491.

On application, by the collector, for judgment against delinquent lands, his oath "that the foregoing is a true and correct list of the delinquent lands and lots within the county of C, upon which I have been unable to collect the taxes, and special assessments, interest and printer's fees charged thereon, as required by law, for the year or years therein set forth; that said taxes, assessments, interest and printer's fees now remain due and unpaid as I verily believe," and signed Henry B. Miller, county treasurer, and ex-officio county collector of Cook county, Illinois, and the following jurat thereto: "Subscribed and sworn to before me this 3rd day of June, A. D. 1875," and signed by the county clerk, were held to be in substantial compliance with the statute. *Weston et al.* v. *The People ex rel.*, 84 Ill. R., 284.

It is not essential to the jurisdiction of the court to render judgment for taxes against delinquent lands, that the town collector should make and return to the county collector an affidavit showing what taxes are delinquent; the delinquent list reported by the county collector to the county clerk, under oath, is *prima facie* evidence of delinquency, upon which, unless overcome by other evidence, the court may render judgment. *Fisher* v. *The People*, 84 Ill. R., 491; *Pike et al.* v. *The People ex rel.*, 84 Ill. R., 80.

The county court has the power to make a rule limiting the time for filing objections to judgment against delinquent lands for taxes, and may enforce the same by refusing to receive objections after the expiration of a reasonable time thus fixed. *Hess* v. *The People ex rel.*, 84 Ill. R., 247.

Where there is a column in a delinquent list headed, "In whose name assessed," and in such column, opposite the several tracts of land, names are given, and the collector states that he gives the owners' names, so far as they are known, it will be taken that the names so appearing are the names of the owners of the lands. so far as they are known, and there is a sufficient compliance with the statute in that particular. *Halsey et al.* v. *The People ex rel.*, 84 Ill. R., 89.

become a purchaser at any sale of real or personal property to enforce the collection of the same, and may, by ordinance authorize and make it the duty of one or more city or village officers to attend such sales, and bid thereat in behalf of the corporation.

160. When assessment set aside—New assessment.] § 46. If any assessment shall be annulled by the city council or board of trustees, or set aside by any court, a new assessment may be made and returned, and like notice given and proceedings had, as herein required in relation to the first; and all parties in interest shall have the like rights, and the city council or board of trustees and court shall perform like duties and have like power in relation to any subsequent assessment, as are hereby given in relation to the first assessment.(1)

161. Supplemental assessments.] § 47. If, in any case, the first assessment prove insufficient, a second may be made in the same manner, as nearly as may be, and so on, until sufficient moneys shall have been realized to pay for such public improvement. If too large a sum shall, at any time, be raised, the excess shall be refunded ratably to those by whom it was paid.(2)

162. New assessments against delinquents—Lien—Limitation.] § 48. If, from any cause, any city or village shall fail to collect the whole or any portion of any special assessment which may be levied, which shall not be canceled and set aside by the order of any court, for any public improvement authorized to be made and paid

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(1) **Where the city of Chicago levied an assessment to extend and open a street,** and it was confirmed as required by its charter, and a warrant is issued to the collector, who returns a portion of the property delinquent, and applies to the court for an order of sale, and the court refuses, on objections interposed by the owners, the city authorities may, under that section proceed to levy a new assessment to cover the defect. *City of Chicago* v. *Ward*, 36 Ill. R., 9; *Laflin* v. *City of Chicago*, 48 Id., 449.

(2) **Proceedings on trial in special assessment cases.** Where objections are filed to the report of commissioners, in assessing benefits and damages, the statute does not contemplate a separate trial as to each objector, but that all shall be tried as one case, by the same jury. The issue to be tried by the jury is, whether the objector is assessed more or less than his premises will be benefitted, or more or less than his proportionate share of the cost of the improvement, and the jury are also required to find the amount the premises should be assessed. It is wholly irrelevant and immaterial what proportion of the total cost would benefit the public, and a question designed to elicit an opinion in this respect is properly refused. It does not matter whether the benefits to the property assessed are equal or more than half equal to the cost of the improvement. A party objecting will not be allowed to show that his lot has been assessed more than another particular lot. The witnesses should be confined to a comparison of the assessments objected to on a particular lot with the general assessment against all the other lots, the real question being, whether the particular lot is over or under assessed in proportion to the general assessment. It is no valid objection that a part of a lot in the line of the proposed street was not condemned by the city authorities. The burden of proof rests upon a city, in a proceeding to assess benefits from the opening of a street, to show that the assessment is right, and then the burden of proof to show its incorrectness is shifted to the objectors, and they must show, by a preponderance of evidence, that one or more of the lots assed was assessed more or less than its proportionote share of the cost of the improvement. *Fagan et al.* v. *City of Chicago*, 84 Ill. R., 227. See sections 140, 141, 145, 148, *ante*.

Where an assessment has been confirmed by a court of competent jurisdiction, and no appeal is taken from that judgment, the question as to the legality of the assessment, in a proceeding to collect the same, must be regarded as *res adjudicata*. *Andrews et al.* v. *The People ex rel.*, 84 Ill. R., 28.

for by special assessment, the city council or board of trustees may, at any time within five years after the confirmation of the original assessment, direct a new assessment to be made upon the delinquent property for the amount of such deficiency, and interest thereon from the date of such original assessment—which assessment shall be made, as near as may be, in the same manner as is herein prescribed for the first assessment. In all cases where partial payment shall have been made on such former assessment, they shall be credited or allowed on the new assesment to the property for which they were made, so that the assessment shall be equal and impartial in its results. If such new assessment prove ineffectual, either in whole or in part, the city council or board of trustees may, at any time within said period of five years, order a third, and so on, to be levied in the same manner and for the same purpose; and it shall constitute no legal objection to such assessment that the property may have changed hands, or been encumbered, subsequent to the date of the original assessment, it being the true intent and meaning of this section to make the cost and expense of all public improvements, to be paid for by a special assessment, a charge upon the property assessed therefor, for the full period of five years, from the confirmation of the original assessment, and for such longer period as may be required to collect, in due course of law, any new assessment ordered within that period.(1)

163. Contracts payable from assessments.] § 49. All persons taking any contracts with the city or village, and who agree to be paid from special assessments, shall have no claim or lien upon the city or village in any event, except from the collections of the special assessments made for the work contracted for.(2)

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(1) **An assessment based upon a former assessment, which was void,** is itself void. *Bowen* v. *City of Chicago*, 61 Ill. R., 268; *City of Chicago* v. *Wright*, 80 Ill. R., 579.

Where a special assessment is held invalid on account of the ordinance under which it was made being illegal, the defect cannot be cured or remedied by making a new assessment and report under the invalid ordinance. *City of Chicago* v. *Wright*, 80 Ill. R., 579.

Where a special assessment was made and payments made thereon and the assessment is afterwards declared void and the city enjoined from proceeding under them, the first assessment and its payment will not prevent a re-assessment for the same improvement, should it again be ordered. *Wells* v. *City of Chicago*, 66 Ill. R., 280.

(2) **Where a city made a contract with a party to perform certain work** upon its streets, wherein it was expressly stipulated on the part of the contractor that he would look for payment only from the proceeds of any certain special assessment already levied, and from the proceeds of any special assessments which might thereafter be levied, he agreeing to make no claim against the corporation, except for the collection of such assessment. *Held*, in a proceeding for a *mandamus* against the corporation to compel payment, that such contractor must abide by his agreement to look for payment only to the proceeds of special assessments made or to be made; it appearing that the corporation was, in good faith, and with reasonable diligence, proceeding to make collections by means of such assessment. *City of Chicago* v. *The People ex rel.*, 48 Ill. R., 416.

Where a city enters into contract for the improvement of a street, the city agreeing to pay for the work when completed and accepted, and when the special assessment to

164. How contracts let—Approval.] § 50. All contracts for the making of any public improvement, to be paid for in whole or in part by a special assessment, and any work or other public improvement, when the expense thereof shall exceed $500, shall be let to the lowast responsible bidder, in the manner to be prescribed by ordinance—such contracts to be approved by the mayor or president of the board of trustees: *Provided, however*, any such contract may be entered into by the proper officer without advertising for bids, and without such approval, by a vote of two-thirds of all the aldermen or trustees elected.(1)

165. Lien.] § 51. All special assessments levied by any city or village under this act, shall, from the date of assessment, be a lien upon the real estate upon which the same may be imposed, and such lien shall continue until such special assessments are paid. And the same proceedings may be resorted to by the collector, upon any warrant or order issued or made for the collection of special assessments, as in the case of the collection of state and county taxes under the general laws of the state.

166. Collection by suit.] § 52. At any time after the same becomes due, it shall and may be lawful for any collector thereof to commence suit in any court of record, in the corporate name of such city or village, against any person or persons, for the total amount of special assessments which such person or persons are liable for the payment of. Such suit shall be commenced by peti-

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be levied to pay the same should be collected, a part of said assessment could not be collected for the reasons the city had by contract expressly exempted the owner from such assessment; such assessment was therefore to that extent void, and the condition of the contract being impossible, the promise to that extent was single and absolute, and the contractor having no notice of such void assessment at the time he assented to the condition, has a remedy against the city to recover what he would have been entitled to had the entire assessment been valid. *City of Chicago* v. *The People, ex rel*, 56 Ill. R., 329.

Municipal corporations may be bound on implied contracts, to be deduced by inference from their corporate acts, without either note, deed or writing. So, where the statement of officials made during the prosecution of a work for a corporation, to persons engaged upon it, are a part of the *res gestæ*, and admissible as showing the manner and circumstance under which the work was begun and prosecuted. *Maher* v. *City of Chicago*, 38 Ill. R., 266.

The fact that no authority exists for the payment, out of the general revenue, of judgments against a city for work performed in the improvement of streets, does not release the city from liability therefor. *Slusser* v. *Burlington*, 42 Iowa R., 378.

The fact that the municipal authorities have been enjoined from confirming an assessment for street paving, is no defense to an action by the contractor, against the city, to recover a balance due under a contract. *Bowery Nat. Bank* v. *Mayor etc. of New York*, 15 N. Y. Supreme Court, 224.

(1) **An act directing that contracts shall be awarded to the lowest** responsible bidder, imposes duties upon the city authorities, which are simply ministerial, but discretionary and deliberative, and courts will not, therefore interfere to restrain these authorities from a contract to one who is not the lowest bidder, even though their action has been indiscreet, unless it is shown that they have acted corruptly and in bad faith. *Findley* v. *Pittsburgh*, 82 Pa. St., 351.

Where a contract, entered into by a city for the construction of certain public works, provides that they shall be completed under the supervision and to the satisfaction of an officer of the city, his action, in finally accepting them, is an announcement of his decision that the terms of the contract have been complied with, and is binding upon the city. *Omaha* v. *Hammond*, 94 U. S., (4 Otto,) 98.

tion, and shall state the several amounts of the special assessments sought to be recovered, and give a general description of the warrant or warrants issued for the collection thereof. Upon the filing of the petition a summons shall be isssued, served and returned as in other suits in such court. Upon the return of such summons, duly served, the court shall forthwith proceed to the hearing of said petition without formal pleadings, and may render judgment for all or any part of the special assessments, as the right and justice of the case may require. The original, or a certified copy (by the clerk, under the corporate seal,) of such warrant or warrants and list or lists, or so much thereof as refers to the special assessments sought to be recovered, shall be *prima facie* evidence of the right of said collector to a judgment in favor of such corporation. Execution shall issue on such judgment as in other cases, but such execution may be first levied upon and collected from any personal property of the defendant; or the court, in which such proceedings were had, may, upon complaint of the city or village, issue a *scire facias* against the person or persons liable for such payment, to show cause why execution should not issue against him or them for the amount of such assessment; and if, upon the return of such *scire facias*, good cause is not shown why execution should not issue, the court may award execution against such person or persons in the usual form of execution upon judgments at law.

167. Supplemental petition to assess benefits in condemnation case.] § 53. Whenever any city or village shall apply to any court for the purpose of making just compensation for property taken or damaged by such proceedings as are authorized by this act, such city or village may file in the same proceeding a supplemental petition, praying the court to cause that an assessment be made for the purpose of raising the amount necessary to pay the compensation and damages which may be or shall have been awarded for the property taken or damaged, with the costs of the proceeding. The said court shall have power, at any time after any such supplemental petition shall have been filed, to appoint three commissioners to make such assessment, and to ascertain, as near as may be, the costs incurred to the time of such appointment, and the probable further costs of the proceedings, including therein the estimated costs of making and collecting such assessment, and shall direct such costs to be included by such commissioners in making said assessment. Like proceedings in making said assessment shall be had, and the assessment shall be made, collected and enforced in the same manner, as near as may be, as is provided in this article in other cases. [As amended by act approved and in force March 30, 1874.

168. Adoption of this article.] § 54. Any city or incorporated town or village may, if it shall so determine by ordinance, adopt the provisions of this article without adopting the whole of this act; and where it shall have so adopted this article, it shall have the right to take all proceedings in this article provided for, and have the benefit of all the provisions hereof.

ARTICLE X.

MISCELLANEOUS PROVISIONS—WATER.

169. Water—borrow money.
170. Acquiring property for water works—jurisdiction over.
171. Regulations—rates—taxation, etc.
172. Tax-payers may enforce rights in name of city, etc.
173. Maps—approval of.
174. Inhabitants competent as jurors, etc.
175. Population—census.
176. Municipal year.
177. City or village need not give appeal bond.

169. Water—Borrow money.] § 1. The city council or board of trustees shall have the power to provide for a supply of water by the boring and sinking of artesian wells, or by the construction and regulation of wells, pumps, cisterns, reservoirs or water works, and to borrow money therefor, and to authorize any person or private corporation to construct and maintain the same at such rates as may be fixed by ordinance, and for a period not exceeding thirty years; also to prevent the unneccessary waste of water; to prevent the pollution of the water, and injuries to such wells, pumps, cisterns, reservoirs or water works. [See § 227–236.

170. Acquiring property for water works—Jurisdiction over.] § 2. For the purpose of establishing or supplying water works, any city or village may go beyond its territorial limits, and may take, hold and acquire property by purchase or otherwise; shall have power to take and condemn all necessary lands or property therefor, in the manner provided for the taking or injuring private property for public uses; and the jurisdiction of the city or village to prevent or punish any pollution or injury to the stream or source of water, or to such water works, shall extend five miles beyond its corporate limits, or so far as such water works may extend. [See § 229, also Rev. Stat., "Eminent Domain," ch. 47.

171. Regulations—Rates, taxation, etc.] § 3. The city council or board of trustees shall have power to make all needful rules and regulations concerning the use of water supplied by the water

works of said city or village, and to do all acts and make such rules and regulations for the construction, completion, management or control of the water works, and for the levying and collecting of any water taxes, rates or assessments, as the said city council or board of trustees may deem necessary and expedient; and such water taxes, rents, rates or assessments may be levied or assessed upon any lot or parcel of ground, having a building or buildings thereon, which shall abutt or join any street, avenue or alley in such city or village through which the distributing pipes of such water works (if any) of said city or village are or may be laid, which can be conveniently supplied with water from said pipes: *Provided*, [whether] the water shall be used on such lot or parcel of ground or not; and the same, when so levied or assessed, shall become a continuing lien or charge upon such lot or parcel of ground, building or buildings, situated thereon, and such lien or charge may be collected or enforced in such manner as the city council may by ordinance prescribe. And the corporate authorities may levy a general tax for the construction and maintenance of such water works, and appropriate money therefor.

172. Tax-payers may enforce rights in name of city, etc.] § 4. A suit may be brought by any tax-payer, in the name and for the benefit of the city or village, against any person or corporation, to recover any money or property belonging to the city or village, or for any money which may have been paid, expended, or released without authority of law: *Provided*, that such tax-payer shall file a bond for all costs, and be liable for all costs in case the city or village be cast in the suit, and judgment shall be rendered accordingly.

173. Maps—Approval of.] § 5. The city council or board of trustees shall have power to provide, by ordinance, that any map, plat, or subdivision of any block, lot, sub-lot, or part thereof, or of any piece or parcel of land, shall be sumitted to the city council or board of trustees, or to some officer to be designated by such council or board of trustees, for their or his approval; and in such cases no such map, plat or subdivision shall be entitled to record in the proper county, or have any validity until it shall have been so approved. [See Rev. Stat., "Recorders," ch. 115, § 13.

174. Inhabitants competent as jurors, etc.] § 6. No person shall be an incompetent judge, justice or juror, by reason of his being an inhabitant or freeholder in said city or village, in any action or proceeding in which said city or village may be a party in interest.

175. Population—Census.] § 7. Whenever in this act any provision thereof is based upon the number of inhabitants, [the num-

ber of inhabitants] of the city or village shall be determined by reference to the latest census taken by authority of the United States or this state, or of such city or village; and it shall be the duty of the secretary of state, upon the publication of any state or United States census, to certify to each city or village the number of inhabitants, as shown by such census. Any city or village may, by ordinance, provide for the taking of a census of the population thereof, in order to determine the number of such population for any and all purposes of this act. And the several courts in this state shall take judicial notice of the population of any city or village, as the same may appear from the latest federal, state, city or village census so taken.

176. Municipal year.] § 8. The term "municipal year" shall be construed to mean the period elapsing between the regular annual election, unless otherwise provided by ordinance.

177. City or village need not give appeal bond.] § 9. When in any suit the city or village prays an appeal from the judgment of any court of this state to a higher court, it shall not be required to furnish an appeal bond.

ARTICLE XI.

OF THE ORGANIZATION OF VILLAGES.

178. By incorporated towns.
179. Ballot.
180. Returns—canvass—record.
181. Result—old officers continue until, etc.
182. New organization—how effected.
183. Petition—election—return.
184. Result—election of officers, etc.
185. Trustees—corporate name—powers.
186. Powers and duties of president and trustees.
187. Style of ordinances.
188. Appointment of officers—prescribe duties and fees.
189. Powers of village constable.
190. Annual election.
191. Suits—jurisdiction, fines, etc.
192. Police magistrates.
193. No incorporation allowed under former laws.

178. By incorporated towns.] § 1. Any town in this state incorporated either under any general law for the incorporation of towns, and acts amendatory thereof, or under any special act for the incorporation of any town or village, may become organized as a village, under this act, in the manner following: Whenever any thirty voters in such town shall petition the president and trus-

tees thereof to submit the question whether such town will become organized as a village, under this act, to the decision of the legal voters thereof, it shall be the duty of such president and trustees to submit the same accordingly; and to fix a time and place within such town for holding such election; and to appoint the judges to hold such election; and to give notice of the time, place and purpose of such election by causing at least five notices thereof to be posted in public places in such town, for at least fifteen days prior to holding such election.(1)

179. Ballot.] § 2. Each qualified voter, resident within such town or proposed village, shall have the right to cast a ballot at such election, with the words thereon, "For village organization under the general law," or "Against village organization, under the general law."

180. Returns—Canvass—Record.] § 3. The judges of such election shall make returns thereof to the president and trustees of the town, as soon as practicable after such election is held; and it shall be the duty of the president and trustees to canvass such returns, and cause a statement of the result of such election to be entered upon the records of the town.(2)

181. Result—Old officers continue until, etc.] § 4. If a majority of the votes cast at such election are for village organization under the general law, such town shall, from thenceforth, be deemed to be duly incorporated as a village under this act; but the town officers then in office shall continue as like officers of such village until their successors shall be elected or appointed under the provisions of this act.

182. New organization—How effected.] § 5. Whenever any area of contiguous territory, not exceeding two square miles, shall have resident thereon a population of at least three hundred inhabitants, and which territory is not included within the limits of any incorpated town, village or city, the same may become incorporated as a village, under this act, in the manner following: Any thirty legal voters resident within the limits of such proposed village may petition the county judge of the county in which they reside, to cause the question to be submitted to the legal voters of such proposed village, whether they will organize as a village under this

(1) See form of petition and notice, Div. II, *post.*

Where a proper petition is presented by the voters in a town existing under a special charter for the right to become incorporated as a village, under the general law, the council has no discretion, whether the petition should be granted or not. The petition being in conformity with the statute, it is the plain duty of the council to act upon it at the earliest convenient moment, fix the time and place of holding an election, select the judges therefor, and give the required notice thereof. *Village of Glencoe* v. *The People, ex rel,* 78 Ill. R., 382.

(2) See form of statement of result of election, Div, II, *post.*

act. And if the territory described in said petition shall be situated in more than one county, then the petition shall be addressed to the judge of the county court of the county where a greater part of such territory is situated. Such petition shall be addressed to the county judge, contain a definite description of the lands intended to be embraced in such village, the number of inhabitants resident therein, and the name of such proposed village.(1) [See § 175.

183. Petition—Election—Returns.] § 6. Upon the filing such petition in the office of the county clerk, it shall be the duty of such judge to perform the same duties in reference to fixing the time and place of such election, giving notice appointing judges thereof, as is above required to be performed by the president and trustees in towns already incorporated. The returns of such election shall be made to the county judge, who shall call to his assistance any two justices of the peace, and canvass such returns, and cause a statement of the result of such election to be entered upon the records of the county court.(2) The second section of this article shall be applicable to such election.

184. Result—Election of officers, etc.] § 7. If a majority of the votes cast at such election is for village organization under the general law, such proposed village, with the boundaries and name mentioned in the petition, shall, from thenceforth, be deemed an organized village under this act, and the county judge shall, thereupon, call and fix the time and place of an election to elect village officers, and cause notice thereof to be posted or published, and perform all other acts in reference to such election, in like manner, as nearly as may be, as he is required to perform in reference to the election of officers in newly organized cities.(3) But the term of office of trustees elected at such election shall terminate as soon as their successors are elected and qualified, at the regular annual election.

185. Trustees—Corporate name—Powers.] § 8. In each village organized under this act, there shall be elected, by the qualified electors therein, six (6) trustees, who shall hold their office for one year and until their successors are elected and qualified. The trustees shall choose one of their own number president; and such village shall thenceforth be considered, in law and equity, a body corporate and politic, by the name and style of "The Village of ....," and by such name and style may sue and may be sued,

(1) See form of petition to county judge, Div. II, *post*.

(2) See form of statement of result of election, Div. II, *post*.

(3) See *ante* p. 21, § 7. See form of notice of election, Div II, *post*.

contract and be contracted with, acquire and hold real and personal property necessary for corporate purposes, adopt a common seal and alter the same at pleasure, and possess all other powers as a corporation in this act conferred upon cities not exceeding five thousand inhabitants, except as herein otherwise expressly provided. And wherever the words "city council" or "mayor" occur in this act, the same shall be held to apply to the trustees and president of such village, so far as the same may be applicable.(1)

186. Powers and duties of president and trustees.] § 9. The president of the board of trustees shall perform the duties and exercise the powers conferred upon the mayor of a city not exceeding five thousand inhabitants, and shall have the right to vote as a trustee at any meeting of the trustees; but when he shall have so voted shall not have the right to give the casting vote; and the trustees shall perform the duties and exercise all the powers conferred upon aldermen in cities; and the president and board of trustees may exercise the same powers conferred upon the mayor and city council of cities of not exceeding five thousand inhabitants, and pass ordinances in like manner. The president of the board of trustees may exercise the same veto powers, and with like effect as the mayor of a city; and the board of trustees may pass ordinances over such veto in like manner as a city council.(2)

187. Style of ordinances.] § 10. The style of ordinances passed in villages shall be as follows: "Be it ordained by the President and Board of Trustees of the Village of .....," (as the case may be).

188. Appointment of officers—Prescribe duties and fees.] § 11. The president and board of trustees may appoint a clerk *pro tempore*, and whenever necessary to fill vacancies; and may also appoint a treasurer, one or more street commissioners, a village constable, and such other officers as may be necessary to carry into effect the powers conferred upon villages, to prescribe their duties and fees, and require such officers to execute bonds as may be prescribed by ordinance.

189. Powers of constable. § 12. The village constable shall have the same powers to make arrests, execute process, and perform other official acts as other constables under the general laws

(1) **A summons in a proceeding against the council of a village,** to obtain a *mandamus* to compel the performance of a public duty, is properly served upon the president alone. *Village of Glencoe* v. *The People ex rel.*, 78 Ill. R., 382.

(2) See *ante* p. 31, § 46.

of the state, together with such other powers as may be conferred on him by ordinance.(1)

190. Annual election.] § 13. An annual election for trustees and a clerk of villages shall be held on the third Tuesday of April in each year, and special elections may be held, under such regulations as may be provided by ordinance, to fill vacancies and for other purposes.

191. Suits—Jurisdiction—Fines, etc.] § 14. Suits and prosecutions for the violations of any village ordinance may be prosecuted in the name of "The Village of ....," and justices of the peace and police magistrates shall have jurisdiction over such suits; and all fines and moneys so collected shall be paid into the village treasury.(2)

192. Police magistrates.] § 15. There may be a police magistrate elected at a regular annual election in each village, who shall give bonds, qualify, and have the same jurisdiction as other justices of the peace, and hold his office for four years, and until his successor is elected and qualified.(3)

193. No incorporation allowed under former laws]. § 16. After the taking effect of this act, no town or city shall become incorporated under any other general law then in force for the incorporation of towns or cities.

II. FERRIES AND BRIDGES.

AN ACT to enable Cities and Villages, incorporated under any general or special law of this State, to acquire by purchase, lease or gift, establish, maintain, license and regulate ferries, bridges, the approaches thereto and tolls thereon. [Approved May 22, 1877. In force July 1, 1877. L. 1877, p. 61.]

194. License and regulate.

194. License and regulate.] § 1. That it shall be lawful for the corporate authorities of any city or village, now or hereafter incorporated under any special or general law of this state, to acquire by purchase, lease or gift, and maintain, license and regulate ferries and bridges, so acquired, and the approaches thereto, not exceeding four acres of land for each ferry or bridge, within

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(1) For powers of constable see HAINES' TREATISE, part IV, relating to powers and duties of constables.

(2) Suits and prosecutions for the violation of ordinances in villages, should be commenced and conducted in like manner as in cities. See *ante* p. 67.

(3) Concerning the election, qualification and jurisdiction of police magistrates, see HAINES' TREATISE, new ed,, part VI.

the corporate limits or within five miles of the corporate limits thereof, and from time to time fix the tolls thereon.(1)

III. ANNEXING AND EXCLUDING TERRITORY.

AN ACT to provide for annexing and excluding territory to and from Cities, Towns and Villages, and to unite Cities, Towns and Villages. [Approved April 10, 1872. In force July 1, 1872. L. 1871–2, p. 284. Rev. Stat., 244.]

195. Petition to be annexed—annexing.
196. Annexing one corporation to another.
197. Proceeding by corporation to annex territory.
198. Notice of proceedings.
199. Objections to annexation—trial.
200. Finding—costs, etc.
201. Proceedings by owners to be annexed.
202. Proceedings to disconnect.
203. Map and ordinance recorded.
204. School districts may use this act.
205. Judicial notice of change.

195. Petition to be annexed—Annexing.] § 1. That on petition, in writing, signed by not less than three-fourths of the legal

(1) **The legislative authority not unusually makes to municipal corporations** a more or less extensive grant respecting ferries and ferry franchise. Such a grant is not, unless otherwise expressed, a compact which cannot be impaired, but in the nature of a public law, subject to be repealed or changed, as the public interests may demand. A power to a municipality to establish and regulate ferries within its limits, does not give it an exclusive power, and consequently does not authorize it to confer an exclusive privilege upon others to establish a ferry. Dillon on Mun. Corp., § 78.

Ferries can be granted by the sovereign power, being *publici juris* riparian possessors are not, by virtue of such possession, entitled th the ferry franchise. *Mills* v. *The County Commissioners*, 3 Scam. R., 53; *Trustees of Schools, etc.* v. *Tatman*, 13 Ill. R. 27. The preference given by statute to riparian owners, provided the privilege has not been granted to any other person, has not changed the common law principle previously stated. *Mills* v. *The County Commissioners*, 3 Scam., R., 53.

A ferry franchise is no more nor less than a right conferred to land at a particular point, and to receive toll for the transportation of passengers and property from that point across a stream. The exercise of such a franchise divests no right or privilege which any citizen before that time enjoyed freely and uninterruptedly to navigate the river. This right of free navigation can, by no means, be construed as conferring upon the citizens the right to appropriate the banks or landings of the river to themselves, or to receive toll for transporting passengers and property from point to point across the same. The grant, unless limited by some general law, or by some restricted provisions in the law itself, is necessarily exclusive to the extent of the privilege thus conferred. When a grant has once been made by legislative auihority to the extent of the rights conferred, the power which made it is expended, and it cannot be taken back, or transferred to another, until the public interests and welfare shall demand its resumption, and provision shall have been made for just compensation to the owner, in the manner required by law. *Mills* v. *County of St. Clair*, 2 Gilm. R., 197.

A license to keep a ferry between certain points, extending three miles on a river, is not exclusive to that extent, but authorizes the establishment of a ferry from any point within the three miles; and when established, other ferries may be be established within the same limits, so that they do not interfere with the ferry ways of the ferry just established. *Gales* v. *Anderson*, 13 Ill. R., 413.

A ferry franchise is in the nature of real estate property, and can only be transferred in accordance with the provisions of the statute in reference to conveyances. *Dundy* v. *Chambers*, 23 Ill. R., 369.

A person operating a ferry under a special charter, has no right to seize a rival ferry-boat, as forfeited to him under the general law; a forfeiture must be declared by some judicial proceeding before the complaining party can take the rival ferry-boat into his possession. *Gear* v. *Bullerdick*, 34 Ill. R., 75.

voters, and by the owners of not less than three-fourths (in value) of the property in any territory contiguous to any city or incorporated village or town, and not embraced within its limits, the city council or board of trustees of said city, village or town (as the case may be) may, by ordinance, annex such territory to such city, village or town, upon filing a copy of such ordinance, with an accurate map of the territory annexed (duly certified by the mayor of the city or president of the board of trustees of the village or town), in the office of the recorder of deeds in the county where the annexed territory is situated, and having the same recorded therein: *Provided*, that no portion, less than the whole of an incorporated city, town or village, shall be annexed to another incorporated city, town or village, except in the mode provided in this act for the annexation of the whole of an incorporated city, town or village, to another city, town or village.(1)

196. Annexing one corporation to another.] § 2. Any incorporated city, village or town may be annexed to another incorporated city, village or town, by ordinance passed by a two-thirds vote of all the aldermen or trustees elect of each corporation desiring annexation: *Provided*, such annexation shall not affect or impair any rights or liabilities either in favor of or against such corporations; and suits founded upon such rights and liabilities may be commenced, and pending suits may be prosecuted and carried to final judgments and execution, the same as if such annexation had not taken place. In making such annexation, the corporations so uniting may, by ordinance, fix the terms of the annexation, which shall have the force and effect of a binding contract: *Provided, however*, that no such ordinance shall be of any binding force or effect until submitted to a vote of the legal voters of such city, town or village, at a general election thereof, and adopted by a majority of all the voters voting thereon at such election, notice of which shall be given at the same time and in the same manner as required for the election of the officers of such city, town or village: *And, provided, also*, that the vote shall be by ballot, which shall be "for union ordinance," or "against union ordinance," and shall be received, canvassed and returned the same as ballots for municipal officers of such city, town or village.

197. Proceedings by corporation to annex territory.] § 3. When

(1) See forms under the above section, Div. II, *post*.

Where a charter of a city, existing at the adoption of the constitution of 1870, provided that any tract of land adjoining such city, laid off into city or town lots, a plat of which was duly recorded, should be a part of a city, provided the city council should so declare, and in 1875 the city council so declared said tract of land a part of said city, it was held, that the action of the city council was lawful, and such territory thereby became a part of the city. *Covington v. City of East St. Louis*, 78 Ill. R., 548.

any incorporated city, village or town shall desire to annex any contiguous territory thereto, and the same shall not have been petitioned for as provided in section one of this article, it shall be lawful for the city council or board of trustees of such city, village or town, by a two-thirds vote of all the aldermen or trustees elect, by ordinance or resolution, to authorize the mayor of such city or the president of the board of trustees of such village or town, to petition the circuit court of the county in which the territory desired to be annexed or a major part thereof is situated, praying such annexation to be made. The petition shall contain a copy of such ordinance, or resolution, and an accurate map of the territory which it is desired to annex, showing all such subdivisions that shall have been made therein. Such petition shall be filed with the clerk of the court at least ten days before the first day of the term at which it is proposed to be heard: *Provided*, that nothing in this section contained shall authorize said petition to be filed, unless the territory so sought to be annexed (except territory intervening between a city and town, or two or more cities or towns, desiring to become united under this act,) shall contain an actual resident population of at least one hundred and fifty inhabitants to each section or fractional part of a section so sought to be annexed —which said fact shall be alleged in said petition and proved on the hearing thereof, the same as any other allegation in said petition.(1)

198. Notice of proceedings.] §4. When it shall be determined to present such petition, the mayor or president of the board of trustees (as the case may be) shall cause notice of the time and place where and when the petition will be or has been filed, and at what term of court the hearing thereof will be had, and setting forth the boundaries or a general description of the territory proposed to be annexed—to be given by publication at least once in each week, for two successive weeks, in some newspaper published in the county where the petition is filed or to be filed (or, if no newspaper is published in such county, then in the nearest newspaper published in this state), and by posting up notices at least fourteen days before such time of hearing, in at least three of the most pub-

(1) **The act providing for annexing and excluding territory** to and from cities, towns and villages approved April 10. 1872, so far as it attempts to confer power on the courts to change the boundaries of such municipal bodies, by annexing or disconnecting territory, is unconstitutional, such acts being in their nature legislative, not judicial acts. The same power cannot be either legislative or judicial, as the legislature may be disposed to retain it or surrender it to the judiciary. If the boundaries of municipal corporations can be altered and changed by the legislature at discretion, and the authorities are to that effect, then the courts cannot be invested with such power, as it is legislative power. *City of Galesburg* v. *Hawkinson*, 75 Ill. R., 152

Held, in Iowa, under a similar statute, that such provision is not liable to the constitutional objection that it confers legislative power upon the circuit court, or that the power to be exercised under it is the creation of a corporation. *Burlington* v. *Leebrick*, 43 Iowa R., 252.

lic places in the territory proposed to be annexed, and a like number in the city village or town to which it is desired to annex such territory.(1)

199. Objections to annexation—Trial.] § 5. The legal voters resident upon the territory thus proposed to be annexed, or any of them, or any owner of land therein, or any voter of such city, village or town, may appear at such hearing, and show cause why such annexation should not be made; and the court, or jury impaneled for that purpose (no member of the jury so impaneled shall be a resident of the corporation or territory to be annexed, nor of the town or towns in which said corporation or territory may be situated,) shall hear all competent evidence that may be offered by either party; and the court may continue the hearing from time to time, for any cause, and make all proper orders in regard to the hearing, giving of notices and other disposition of the case.

200. Finding—Costs, etc.] § 6. If, upon the hearing, the court or the jury shall find that such territory ought to be annexed to such city, village or town, and can be so done without injustice to the inhabitants or persons interested, the court shall so order. If the court or jury shall find against the petitioners, the petition shall be dismissed at the cost of the petitioners; and no subsequent petition shall be presented for the annexation of any of the territory embraced in such petition, within one year from the time of entering such order: *Provided*, that new trials may be granted as in other jury cases.

201. Proceeding by owner to be annexed.] § 7. When not less than a majority in number of the legal voters or the owner or owners of any tract or tracts of land, contiguous to any incorporated city, village or town, shall, by petition in writing, signed by them, and filed in the circuit court of the county where such territory or a major part thereof is situated, pray to be annexed to such city, village or town, the like proceedings may be had thereon, and with the like effect, as in case of a petition by a city, village or town: *Provided*, a copy of the notice required to be given shall be left with the mayor of such city, or president of such village or town, at least ten days before such petition is heard.(2)

202. Proceedings to disconnect.] § 8. Whenever a majority of the legal voters of any territory within any city, town or village, and being upon the border and within the boundary thereof, shall petition the circuit court of the county in which such city, town or

(1) See form of notice, Div. II, *post*.

(2) See form of petition, Div. II, *post*.

village is situated, praying to be disconnected therefrom, such petition shall be filed with the clerk of the court at least ten days before the first day of the term at which it is proposed to be heard, and like proceedings shall be had as is required by sections four, five and six of the act for the annexation of territory to such city, town or village: *Provided*, that the provisions of this section shall only apply to lands not laid out into city or town lots or blocks.(1)

203. Map and ordinance recorded.] § 9. When any territory is annexed to any city, village or town, as provided in this act, it shall be the duty of the mayor of the city, or the president of the board of trustees of the village or town, (as the case may be,) to cause an accurate map of such added territory, together with the ordinance for the annexation, certified by such mayor, and if a decree or order of the court has been made therefor, a copy of the same, to be filed for record and recorded in the recorder's office for the county in which such added territory is situated. If territory is disconnected or excluded from any city, village or town, a copy of the ordinance or decree therefor shall be so filed for record and recorded.

204. School districts.] § 10. All school districts, and other corporations incorporated for school purposes, under special acts of the legislature, desiring to annex or disannex territory, may proceed under the provisions of this act. [See Rev. Stat., "Schools," ch. 122, § 33.

205. Judicial notice.] § 11. All courts in this state shall take judicial notice of cities, towns and villages, and of the changes of their territory, made under the provisions of this act.

IV. CHANGING NAME.

AN ACT to enable any city, town or village in this state to change its name. [Approved March 7, 1872. In force July 1, 1872, Rev. Stat., 246.

206. Petition.
207. Proceedings.
208. Duty of secretary of state.
209. Time of hearing to be fixed—notice.
210. Hearing petition and remonstrances.
211. Order filed with secretary of state—notice.
212. Rights saved.
213. When change void.
214. Name of unincorporated town, etc.

206. Petition.] § 1. That whenever a petition, signed by the qualified electors of any city, incorporated town or incorporated

(1) See form of petition, Div. II, *post*.

village of this state, equal in number to one-half of those who voted for the officers therein at the last election, shall be presented to the corporate authorities of such city, town or village, praying that the name of such city, town or village may be changed, it shall be lawful for such corporate authorities to make such change in the manner hereinafter prescribed.(1)

207. Proceedings.] § 2. Previous to the presentation of the petition in the preceding section mentioned, the name proposed to be given to such city, town and village shall be filed in the office of the secretary of state, to be there retained for the period of at least sixty days, and upon application, the secretary of state shall, at any time after the filing of such name, grant a certificate, stating that such name has not been given to any other city, incorporated town, or incorporated village, or municipality in this state, if such be the fact; but if such name has been adopted by any other city, town, village or municipality, as appears from information in his office, the secretary of state shall so notify the party or parties making such application, in which case another name shall be filed in his office, which name shall likewise remain for the like period of sixty days; and no petition shall be acted upon by said corporate authorities unless accompanied by the certificate of the secretary of state, setting forth that such name has not been adopted elsewhere in this state.

208. Duties of secretary of state.] § 3. The secretary of state shall, as soon as practicable after the passage of this act, communicate with the clerks of the several counties of this state, and ascertain the names of all the cities, towns, villages or other municipal corporations therein, and arrange such names in alphabetical order for convenient reference. Such list of names shall be kept filed in his office, and shall be changed whenever a change of name shall be effected under the provisions of this act.

209. Time of hearing to be fixed—Notice.] § 4. At any meeting of the corporate authorities of any city, incorated town or in-

(1) See form of petition for change of name, Div. II, *post*.

The name of an incorporated place may be changed, its boundaries enlarged or diminshed, and its mode of government altered, and yet the corporation not be dissolved, but in law remain the same. Dillon on Mun. Corp., § 115.

Every corporation must have a name. This is essential to distinguish it from other corporations. If a particular name be given to a corporation in its charter, the corporation can no more change it at its pleasure, without legislative sanction, than a man can change his baptismal name. If no name be given to a corporation it may obtain one by implication. Dillon on Mun. Corp., § 117. The general rule is that where a name is given to a municipal corporation by charter or by statute, this cannot be changed by the act of the corporation. See Dillon on Mun. Corp., § 120.

Where an act of the legislature authorized any existing town or city to adopt the provisions thereof in place of its special charter, and was silent as to the corporate name after the change was made, it was held that the former name was retained. Dillon on Mun. Corp., § 119.

corporated village, after the presentation of the petition herein provided, such corporate authorities shall fix the time when such petition shall be considered, and order notice of the presentation thereof to be given, by publishing such notice for three successive weeks in some newspaper having a general circulation in such city, town or village. Such notice shall state that a change of the name of such city, town or village has been prayed for, and the time when action on said petition will be had, at which time remonstrances, if any, will be heard.(1)

210. Hearing petition and remonstrances.] § 5. At the time fixed in the notice provided for in the preceding section, or if, from any cause, action thereon is not taken, such petition praying for a change of name shall be, with all remonstrances, heard at any subsequent meeting of the corporate authorities of any such city, town or village; and if said corporate authorities are satisfied that such change of name is necessary and proper, they shall thereupon make an order changing the name of such city, town or village, and adopting the name prayed for in such petition.

211. Order filed with secretary of state—Notice.] § 6. If said change of name is made, said corporate authorities shall cause a copy of the order making such change to be filed in the office of the secretary of state, who shall thereupon make known the fact of such change, by publication in some newspaper of the county in which such city, town or village is situated, and also in some newspaper in the city of Chicago; and all the courts of this state shall take judicial notice of the change thus made.

212. Rights saved.] § 7. Nothing in this act contained shall affect the rights or privileges of such city, town or village, or those of any person, as the same existed before such change of name. And all proceedings pending in any court or place in favor of or against said city, town or village, may be continued to final consummation under the name in which the same was commenced.

213. When change void.] § 8. If the name of any such city, town or village shall be changed contrary to or without complying with the provisions of this act, such change shall be void; and all proceedings instituted or acts done in such name as changed, shall be void and held for naught in the courts of this state.

214. Name of unincorporated towns, etc.] § 9. When the plat of any unincorporated town or village shall be placed upon record in any county of this state, the circuit court of said county shall have power, at any regular term of said court, to change the

(1) See forms under the above section, Div. II, *post.*

name of such unincorporated town or village, upon the petition of a majority of the legal voters residing within the limits of such town or village: *Provided*, notice of the proposed change of name shall be filed in the office of the secretary of state, as provided in section two of this act.(1)

V. TERRITORIAL JURISDICTION.

AN ACT to define the jurisdiction of the cities and incorporated towns bordering on the Ohio river. [Approved March 26, 1872. In force July 1, 1872. L. 1871-2, p. 578. Rev. Stat., 248.]

215. Over Ohio River.
216. To enforce ordinances on boats, etc.

215. Over Ohio river.] § 1. That each of the several cities and incorporated towns of this state, lying on the Ohio river, and bounded thereby, are hereby invested with jurisdiction over their river fronts, and shall have jurisdiction over the waters of said river, in all cases occurring on said river, and opposite to each of said cities or incorporated towns, co-extensive with the jurisdiction of the several counties in this state in which said cities or incorporated towns may lie: *Provided*, nothing herein contained shall be construed so as to extend the jurisdiction of said cities or incorporated towns over any islands in said river included within the corporate limits of any county in the state of Kentucky. [See § 44, 71.

AN ACT to extend the jurisdiction of towns and cities on any river within or on the borders of this state, for the purpose of police regulations. [Approved and in force Feb. 15, 1865. L. 1865, p. 111.]

216. To enforce ordinances on boats, etc.] § 1. That cities and towns on any river within or on the borders of this state, shall have the right to extend and enforce their ordinances so as to include any boat or other floating structure, which shall be kept within two miles of the city or town limits, as a place for drinking spirituous liquors, or for gaming, or for the purpose of prostitution: *Provided*, no authority shall be given by this law, beyond what the law now authorizes, to interfere with any steamer or other boat, the usual business of which is the carrying of freight or passengers. [See § 44, 71.

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(1) See form under the above section, Div. II, *post*.

VI. HOUSES OF ILL-FAME.

AN ACT to prevent the licensing of houses of ill-fame, and the official inspection or medical examination of the inmates thereof, in the incorporated cities, towns and villages of this state. [Approved and in force March 27, 1874. Rev. Stat., 248.]

217. Licensing and medical inspection forbidden.
218. Emergency.

217. Licensing and medical inspection forbidden.] § 1. That it shall be unlawful for the corporate authorities of any city, town or village in this state to grant a license to any person, male or female, to keep what is known as a house of ill-fame or house of prostitution. And it shall be unlawful for any board of health (or any member or employee of the same) now existing, or which may hereafter exist under the laws of this state, to interfere in the management of any house of ill-fame or house of prostitution, or to provide in any manner for the medical inspection or examination of any inmate of the same. [See § 62, item 45.

218. Emergency.] § 2. Whereas, the legislative authorities of certain cities in this state are about to license houses of ill-fame, therefore an emergency exists why this act should take effect immediately: therefore, this act shall take effect and be in force from and after its passage.

VII. LEASING LANDINGS AND LEVEES.

AN ACT to authorize incorporated cities, towns or villages in this state, situated upon the banks of navigable rivers, to lease parts of their public landings or levees. [Approved March 31, 1874. In force July 1, 1874. Rev. Stat., 249.

219. When landings and levees may be leased.
220. What lands—when lease takes effect—definition—resolution.

219. When landings and levees may be leased.] § 1. That whenever, in the opinion of the legislative authority of any incorporated city, or of the president and board of trustees of any incorporated town or village of this state, situate upon the banks of any navigable river, the lands acquired and owned by any such city, town or village, for the purpose of a public landing or public levee, are not immediately required for such purpose, then any such city, town or village may lease such parts of such landing or levee as may be thought best by the legislative authority of such city, or president and board of trustees of such town or village,

for the purpose of erecting manufactories, warehouses or grain elevators thereon: *Provided*, no such lease shall extend beyond the period of twenty-five years from its execution. See § 62, items 32, 33.

220. What lands—When lease may take effect—Definition—Restriction.] § 2. That the right of any such city, town or village to lease any part of the land in the foregoing section, shall embrace all such lands as may have been conveyed to the same: *Provided, however*, no such lease shall take effect or be in force until approved by an order, resolution or ordinance of the legislative authority of such city, or president and board of trustees of such town or village. The words "legislative authority," when used in this act, shall be held to include the common council. The provisions of this act shall not apply to cities having over one hundred thousand inhabitants.

VIII. POLICE MAGISTRATES.

AN ACT to authorize the election of police magistrates in towns, cities and villages where the same are not now provided for by law. [Approved and in force April 13, 1875. L. 1875, p. 91.]

221. Election, jurisdiction and term.
222. Emergency.

221. Election, jurisdiction and term.] § 1. That all towns, cities and villages in the state which have been incorporated under charters granted by special acts, or under a general act, when the law under which they are incorporated does not authorize the election of a police magistrate, be and they are hereby authorized to elect one police magistrate at the first annual election of town, city or village officers that shall occur after the passage of this act, and quadrennially thereafter. Such police magistrates shall hold their offices for the same term, be commissioned and qualified, and have the same jurisdiction and fees, as police magistrates of villages have under the general law for the incorporation of cities and villages.

222. Emergency. § 2. As the first annual election of town, city, and village officers in many of the towns, cities and villages in this state by this act authorized to elect a police magistrate, will occur before the first day of July next, after the adjournment of this general assembly; therefore an emergency exists requiring this act to take effect immediately, therefore this act shall take

effect and be in force from and after its passage. *Provided*, that the election for police magistrates in cities that have one or more police magistrates, elected under a former organization as a town or city, shall not be held until the term for which said police magistrate or magistrates were elected has expired.(1)

IX. POLICE AND FIREMEN'S RELIEF FUND.

AN ACT for the relief of disabled members of the police and fire departments in cities and villages. [Approved May 24, 1877. In force July 1st, 1877. L. 1877, p. 62.]

223. How fund created.
224. Mayor, etc., trustees of fund.
225. Board to control fund.
226. Treasurer to keep fund—bond.
227. Warrants drawn on treasurer.
228. Permanent disability—death—annuity.
229. How money paid out.

223. How fund created.] § 1. That one-fourth of all the rates, taxes and license fees which are or may be hereafter required by law to be paid by corporations, companies or associations not incorporated under the laws of this state, engaged in any village or city in this state effecting fire insurance, and all moneys received from fines inflicted upon members of the police and fire departments for a violation of the rules and regulations of the service, and all fines recovered because of conviction for a violation of the fire ordinances, and all moneys accruing from the sale of unclaimed stolen property, shall be set apart by the treasurer of the city or village, to whom the same shall be paid as a fund for the relief of disabled members of the police and fire departments of such city or village.

224. Mayor, etc., trustees of fund.] § 2. The mayor or president of the board of trustees, the marshal or chief officer of the police department, chief officer of the fire department and the chairman of the committee on police and the committee on fire

(1) **A police magistrate is a law officer of justice,** who holds or presides at a police court, a court established for the administration of justice within and for a municipal corporation. Courts of this kind are of ancient origin, and in the lapse of time they have become a necessary incident to every municipal corporation. A municipal corporation might, at common law, enjoy the franchise of holding a court; and corporation or municipal courts, which were of local or inferior jurisdiction, were not uncommon. See HAINES' TREATISE, subject "Police Magistrates," p. 965, ch. I.

On the subject of police magistrates in general, their election and qualification, jurisdiction and duties and forms of proceeding, see HAINES' TREATISE, new edition, part VI.

and water of the city council or board of trustees of the city or village, shall constitute and be a board by the name of the trustees of the police and firemens's relief fund. The said board shall select from their number a president and a treasurer, and may appoint a clerk or secretary.

225. Board to control fund.] § 3. The said board shall have the exclusive control and management of the fund mentioned in the first section of this act, and of all moneys donated, paid or assessed for the relief of disabled policemen or firemen, and shall have the power to assess each and every member of the police and fire departments of such city or village not to exceed the sum of five dollars ($5.00) per annum, which shall be received and held by the treasurer of said relief fund in like manner as the other moneys herein provided to be paid to him; and any member of such police and fire departments who shall not within one month after the notice in writing to him from said board of the assessments against him, pay the same, shall not be entitled to or receive any benefit under this act. The said board may make all needful rules and regulations for its government in the discharge of its duties, and shall hear and decide all applications for relief under this act, and its decisions on such applications shall be final and conclusive, and not subject to review or reversal except by the board: *Provided*, That nothing herein contained shall render the payment of any sum of money or annuity which may be awarded by the board obligatory on the board, or chargeable against it as a legal right; but the board may at any time in its discretion, order that such sums of money or annuity shall be reduced, or that payment of the same shall not be made. The board shall cause to be kept a record of all its meetings and proceedings.

226. Treasurer to keep fund—Bond.] § 4. The treasurer of the board shall be the custodian of the fund in the first section of this act mentioned, and of all moneys donated, paid or assessed towards or on account of the relief fund hereby created, and shall secure and safely keep the same, subject to the control and direction of the board, and shall keep his books and accounts in such a manner as may be prescribed by the board, and the same shall always be subject to the inspection of the board, or any member thereof. The treasurer shall, within ten (10) days after his election or appointment, execute a bond to the city or village, as the case may be, with good and sufficient securities in such penal sum as the board may direct, to be approved by the board, conditional for the faithful performance of the duties of his office, and that he will safely keep and well and truly account for all moneys and

property which may come to his hands as such treasurer, and that on the expiration of his term of office he will surrender and deliver over to his successor all unexpended moneys and all property which may have come to his hands as such treasurer. Such bond shall be filed in the office of the clerk of such city or village, and in case of a breach of the same, or the conditions thereof, suit may be brought on the same in the name of such city or village, for the use of said board or of any person or persons injured by such breach.

227. Warrants drawn on treasurer.] § 5. It shall be the duty of the mayor and clerk, or the comptroller if there be one, and the officer or officers of such city or village who are, or may be authorized by law to draw warrants upon the treasurer of such city or village, upon request made in writing by said board, to draw warrants upon the treasurer of such city or village, payable to the treasurer of said board, for the fund set apart by such city or village treasurer as prescribed by the first section hereof.

228. Permanent disability—Death—Annuity.] § 6. When, in the judgment of the board, a sufficient amount shall have accumulated in said fund to justify the application thereof to the use for which the same is hereby created, if any member of the police or fire departments, while in the actual performance of duty, shall become permanently disabled, so as to render proper his retirement from membership, a sum not exceeding six hundred dollars ($600) per annum, or such less sum as, in the judgment of the board, the fund will justify, shall be paid to such member out of said fund; or if any member, while in the actual discharge of duty, shall be killed, or shall die from the immediate effects of an injury received by him while in such discharge of duty, or shall die after ten years' service in the police or fire departments, and while still in the service of the same, and shall leave a widow, or if no widow, any child or children under the age of sixteen (16) years, a sum not exceeding six hundred dollars ($600) per annum, or such less sum as, in the judgment of the board, the condition of the fund will justify, shall be paid to such widow so long as she shall remain unmarried, or to such child or children while under the age of sixteen years.

229. How money paid out.] § 7. All moneys ordered to be paid from said relief fund to any person or persons, shall be paid by the treasurer of said board only upon warrants signed by the President of the board and countersigned by the Secretary, if there be one, and no warrant shall be drawn except by order of the board duly entered in the record of the proceedings of the board. In case the said relief fund or any part thereof shall, by order of

the said board or otherwise, be deposited in any bank or loaned, all interest on money which may be paid, or agreed to be paid, on account of any such loan or deposit, shall belong to and constitute a part of said fund; *Provided*, that nothing herein contained shall be construed as authorizing the said treasurer to loan the said fund or any part thereof, unless so authorized by said board.

[NOTE.—The foregoing act is in place of that of March 24, 1874, on the same subject. See Rev. Stat., 1874, p. 249.]

X. WATER WORKS.

AN ACT authorizing cities, incorporated towns and villages to construct and maintain water works. [Approved and in force April 15, 1873. Rev. Stat., 230.]

230. Power to supply water—letting contracts.
231. Borrow money—tax.
232. May acquire property for works, etc.
233. Rules—tax—assessment—lien.
234. Special assessments.
235. Separate funds.
236. When act not apply.
237. Emergency.
238. Bond—assessments payable by installments.
239. When installments to be paid—interest.
240. Applies to assessments already ordered.
241. Emergency.
242. Power to contract for water.
243. Tax.

230. Power to supply water—letting contract.] § 1. That all cities, incorporated towns and villages in this state be and are hereby authorized, and shall have power to provide for a supply of water for the purposes of fire protection, and for the use of the inhabitants of such cities, incorporated towns or villages, by the erection, construction [and] maintaining of a system of water works: *Provided*, that all contracts for the erection or construction of any such works, or any part thereof, shall be let to the lowest responsible bidder therefor, upon not less than three weeks' public notice of the terms and conditions upon which the contract is to be let having been given, by publication in a newspaper published in such city, town or village; or if no newspaper is published therein, then in some newspaper published in the county: *And, provided, further*, that no member of the city council or board of trustees, or mayor, shall be directly or indirectly interested in any such contract; and in all

cases the council or board of trustees, as the case may be, shall have the right to reject any and all bids that may not be satisfactory to them.(1) [See § 169–171.

231. Borrow money—Tax.] § 2. Such cities, incorporated towns and villages may borrow money and levy and collect a general tax in the same manner as other municipal taxes may be levied and collected for the erection, construction and maintaining of such water works, and appropriate money for the same. [See § 62, item 3.

232. May acquire property for works, etc.] § 3. For the purpose of erecting, constructing, locating, maintaining or supplying such water works, any such city, incorporated town or village may go beyond its territorial limits, and may take, hold and acquire property and real estate, by purchase or otherwise: and shall also have the power to take, hold and acquire and condemn any and all necessary property and real estate for the location, erection, construction and maintaining of such water works, in the manner provided for the taking and condemning of private property for public use; and may also acquire and hold real estate and other property and rights necessary for the location, erection, construction and maintenance of such water works, by purchase or otherwise; and the jurisdiction of such city, town or village to prevent or punish any pollution or injury to the stream or source of water for the supply of such water works, shall extend ten miles beyond its corporate limits. [See § 170, also, Rev. Stat., "Eminent Domain," ch. 47.

233. Rules—Tax—Assessment—Lien.] § 4. The common council of such cities, or trustees of such towns or villages, shall have power to make and enforce all needful rules and regulations in the erection, construction and management of such water works, and for the use of water supplied by the same. And such cities, towns and villages shall have the right and power to tax, assess and collect from the inhabitants thereof such tax, rent or rates for the use and benefit of water used or supplied to them by such water works, as the common council or board of trustees, as the case may be, shall deem just and expedient. And all such water

(1) **A city having power to pass ordinances respecting the police** of the place, and to preserve health, is authorized as a sanitary and police regulation, to contract to procure a supply of water, by boring an artesian well, or otherwise, on the public square, and is the judge of the mode best adapted to accomplish the object. Dillon on Mun. Corp., § 97.

Under general authority to make all contracts necessary for its welfare, a city may contract for water works. Dillon on Mun. Corp., note to section 371.

It is an authorized and frequently wise and just exercise of the right of eminent domain, to empower towns and cities to take, upon compensation being made, private property for the purpose of supplying inhabitants with pure water. This is clearly a public use. Dillon on Mun. Corp., § 462.

taxes, rates or rents shall be a lien upon the premises and real estate upon or for which the same is used or supplied. And such taxes, rents or rates shall be paid and collected, and such lien enforced, in such manner as the common council shall, by ordinance, direct any provide.(1) [See § 171.

234. Special assessment.] § 5. The expense of locating, erecting and constructing reservoirs and hydrants for the purpose of fire protection, and the expense of constructing and laying water main pipes, or such part thereof as may be just and lawful, may be assessed upon and collected from the property and real estate specially benefitted thereby, if any, in such manner as may be provided for the making of special assessments for other public improvements in such cities, towns or villages. [See § 133 *seq.*

235. Separate fund.] § 6. All the income received by such cities, towns or villages from such water works, from the payment and collection of water taxes, rents or rates, shall be kept in a separate fund, and shall first be applied in the payment and discharge of the costs, interest on bonds or money borrowed and used in the erection and construction of such water works and running expenses thereof. And any surplus may be applied in such manner as the common council or board of trustees may direct.

236. When act not apply.] § 7. The provisions of this act shall not apply to cities, towns or villages in which water works are now managed or controled by a board of public works.

237. Emergency.] § 8. Whereas many of the cities embraced in this act are entirely without adequate protection from fires, and are without lawful authority to provide the necessary means of protection authorized by this act; therefore an emergency exists that this act should take effect immediately; therefore, this act shall take effect and be in force from and after its passage.

AN ACT to provide for the laying of water supply pipe by bonds and special assessment, payable in installments. [Approved and in force March 17, 1874. Rev. Stat., 251.]

238. Bonds—Assessments payable in installments.] § 1. That whenever the corporate authorities of any city, town or village

(1) **A regulation of a board of public works** requiring citizens desiring to use the water of the city flowing through the main pipes, to lay down at their own expense the necessary service pipe from their lots to the main pipe, is just and reasonable, and in accordance with the principle upon which special assessments on account of special benefits are founded. *Prindeville* v. *Jackson, et al.*, 79 Ill R., 337.

Where a regulation exists, and a city lays down main pipes, and for the purpose of avoiding the tearing up the pavement of the street in future, lays service pipes from the main pipe to the lots abutting on the street, this does not entitle any citizen to the free use thereof, but the city has the right to require lot owners using the same, to refund to the city the cost of laying it. *Prindeville* v. *Jackson et al.*, 79 Ill. R., 337.

shall provide, by ordinance, for the laying of water supply pipes, to be paid for by a special assessment to be made under the provisions of article nine of the act of the general assembly, entitled "An act to provide for the incorporation of cities and villages," approved April 10, A. D. 1872, such corporate authorities may, in their discretion, provide in such ordinance, or by an ordinance to be adopted at any time prior to the issuance of the warrant to the collector for the collection of such assessment, that the amount of the estimated cost of such improvement shall be provided for in the following manner, to-wit: That bonds of the city, town or village, as the case may be, shall be issued for such portion of the estimated cost of such improvement as shall be apportioned to the city, town or village as public benefit, payable at such time or times, within twenty years, as may be provided by said ordinance, or it may in such ordinance be provided that all or any portion of the amount, so apportioned as public benefits, may be made by general taxation in accordance with the provisions contained in said article nine, and that the portion of said estimated cost which shall be assessed upon property specially benefitted, shall be payable in such annual installments, not exceeding ten in number, as may in such ordinance be prescribed: *Provided*, that nothing in this section shall authorize any city, town or village to issue such bonds to an amount, including all existing indebtedness, in excess of the charter, statutory or constitutional limitation of the indebtedness of such city, town or village.

239. When installments payable—Interest.] § 2. Whenever such corporate authorities shall have provided by ordinance for the making of such improvement in the manner prescribed in section 1 of this act, the first installment of the amount assessed upon property specially benefitted shall be payable immediately upon the issuance, by the clerk of such city, town or village, of his warrant to the collector, and the subsequent installments shall be payable annually thereafter, with interest until paid, at such rate as shall be prescribed in such ordinance, not exceeding ten per cent. per annum.

240. Applies to assessments already ordered.] § 3. This act shall apply to assessments already ordered for the purpose set forth in section 1 of this act, and to the ordinances in relation thereto, as well as to ordinances hereafter to be adopted.

241. Emergency. § 4. Whereas certain cities, towns and villages are about to lay water supply pipe, and are desirous of availing themselves of the provisions of this act, therefore an emergency is declared to exist, and this act shall take effect and be in force from and after its passage.

AN ACT to enable cities and villages to contract for a supply of water for public use, and to levy and collect a tax to pay for water so supplied. [Approved April 9, 1872. In force July 1, 1872. L. 1871-2, p. 271. Rev. Stat., 252.]

242. Power to contract for water.] § 1 That in all cities and villages where water works may hereafter be constructed by an incorporated company, the city or village authorities in such cities and villages may contract with such incorporated company for a supply of water for public use, for a period not exceeding thirty years.

243. Tax.] § 2. Any such city or village so contracting may levy and collect a tax on all taxable property within such city or village, to pay for the water so supplied.

XI. SALARIES OF CITY OFFICERS.

AN ACT to enable the corporate authorities of cities to establish and fix the salaries of city officers. [Approved and in force April 23, 1873. Rev. Stat., 252.]

244. When to be fixed—not changed during term.
245 Emergency.

244. When to be fixed—Not changed during term.] § 1. It shall and may be lawful for the common council or legislative authority of any city in this state to establish and fix the amount of salary to be paid any and all city officers, as the case may be, except members of such legislative body, in the annual appropriation bill or ordinance made for the purpose of providing for the annual expenses of any such city, or by some ordinance prior to the passage of such annual appropriation bill or ordinance; and the salaries or compensation thus fixed or established, shall neither be increased nor diminished by the said common council or legislative authority of any such city, after the passage of said annual appropriation bill or ordinance, during the year for which such appropriation is made, and no extra compensation shall ever be allowed to any such officer or employee over and above that provided in manner aforesaid.(1) [See § 84, 85.

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(1) **The legislature, in the absence of constitutional limitation,** may create and abolish offices, add to or lessen their duties, abridge or extend the term of office, and increase, diminish or regulate the compensation of officers at its pleasure. Dillon on Mun. Corp., § 168.

A municipal corporation may, unless restrained by charter, or unless the employment is in the nature of a contract, reduce or otherwise regulate the salaries and fees of its officers, according to its view of expediency and right. Although an officer may be elected or appointed for a fixed period, yet where he is not bound, and cannot be compelled to serve for the whole time, such election or appointment cannot be considered a contract to hire for a stipulated

245. Emergency.] § 2. Whereas the corporate authorities of certain cities in this state have no power to establish or fix the salaries of their city officers in certain cases, whereby an emergency exists requiring this act to take immediate effect: therefore, this act shall take effect and be in force from and after its passage.

XII. APPOINTMENT AND REMOVAL OF CITY OFFICERS—MAYOR'S BILL.(1)

AN ACT concerning the appointment and removal of city officers in all cities in this state, conferring additional powers and duties upon mayors, and concerning appropriation bills or ordinances that may be passed in such cities. [Approved and in force April 10, 1875. L. 1875, p. 41.]

246. Appointment and removal of city officers.
247. Approval and veto power of mayor.
248. Passage over mayor's veto.
249. Emergency.

246. Appointment and removal of city officers.] § 1. In all cities in this state the mayors thereof shall have power to appoint all city officers (whose election by the voters of such city is not provided for by law), by and with the consent of the city council, (or in case the legislative authority consists of two houses, then by and with the consent of the board of councilmen,) by a vote of the majority of all its members authorized by law to be elected, to be taken by yeas and nays, and entered upon its records. And the mayor shall also have power to remove any officer so appointed whenever, in his opinion, the interests of the city requires such removal: he shall report such removal, with his reasons

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term. Ordinances fixing salaries are not in the nature of contracts with officers. Dillon on Mun. Corp., § 170.

The law, in regard to fixing the compensation of city officers, is in effect the same as in regard to county officers, in which the court say, that where the board has once acted and fixed the compensation of the county clerk, that compensation cannot be increased or diminished during his term. Any subsequent order of the board, increasing or diminishing the compensation of a county clerk, can operate only on the compensation of one whose term begins after the making of such order. *Purcell* v. *Parks*, 82 Ill. R., 346; *Wheelock et al.* v. *The People, use, etc.*, 84 Ill. R., 551. That where the compensation of a sheriff has not been previously fixed by the county board, the first meeting of the board, after his election, is the proper time to fix such compensation. *Wheelock et al.* v. *The People, use, etc.*, 84 Ill. R., 551.

(1) **The act known as the mayor's act** is a temporary general law, and is not within the provision of the constitution prohibiting special legislation. This act is not in conflict with section 13, article 4 of the constitution, as embracing more than one subject. The entire act relates to a single general subject, which is sufficiently expressed in the title, namely: the duties of mayors in cities, and there is nothing incongruous in its different provisions. *People ex rel.* v. *Wright*, 70 Ill. R., 388

therefor, to the council, (or in case the legislative authority consists of two houses, then to the board of councilmen,) at its next regular meeting; and if the council by a two-thirds vote shall, (or if the board of councilmen shall by a majority vote) of all its members authorized by law to be elected, by yeas and nays to be entered upon its record, disapprove of such removal, such officer shall thereby become restored to the office from which he was so removed; but he shall give new bonds and take a new oath of office. The mayor may appoint any suitable person to discharge the duties of the office from which he shall have removed any officer, until his successor is appointed and qualified, or such officer restored to office in the manner aforesaid.

247. Approval and veto power of mayor.] § 2. All ordinances passed by the city council shall, before they take effect, be deposited in the office of the city clerk, and if the mayor approves thereof, he shall sign the same, and such as he shall not approve he shall return to the council, with his objections thereto, in writing, at the next regular meeting of the council occurring not less than five days after the passage thereof. Such veto may extend to any one or more items or appropriations contained in any ordinance, and in case the veto only extends to a part of such ordinance, the residue thereof shall take effect and be in force; but in case the mayor shall fail to return any ordinance with his objections thereto, by the time aforesaid, he shall be deemed to have approved such ordinance, and the same shall take effect accordingly.(1)

248. Passage over mayor's veto.] § 3. Upon the return of any ordinance by the mayor, the vote by which the same was passed shall be reconsidered by the council; and if, after such reconsideration, two-thirds of all the members elected to the city council shall agree, by yeas and nays, to pass the same, it shall go into effect, notwithstanding the mayor may refuse to approve thereof. The vote to pass the same over the mayor's veto shall be taken by yeas and nays, and entered on the journal.(2)

249. Emergency.] § 4. Whereas, the legislative authorities in many cities pass their appropriation bills before the first day of July next, and mayors have no power to veto a part of such appropriation or ordinance, wherefore an emergency exists; therefore, this act shall take effect, and be in force from and after its passage.

(1) See *ante* p. 31, § 46.

(2) See *ante* p. 31, § 47

XIII. REBATE AND REDUCTION OF TAXES, ETC.

AN ACT to prevent the unjust collection, by incorporated cities and towns, of taxes levied upon property destroyed by fire, and to authorize the common council of such cities, or board of trustees of such towns, to change or amend appropriation bills, to pass new appropriation bills, to reduce taxes and special assessments in certain cases, and to discontinue special improvements. [Approved and in force Jan. 18, 1872. L. 1871-2, p. 270. Rev. Stat., 252.]

250. Rebate when property destroyed.
251. Reduce or release tax or assessment.
252. Emergency.

250. Rebate when property destroyed.] § 1. That whenever, in any incorporated city or town in this state, any property listed or assessed for municipal taxation, shall have been or shall hereafter be destroyed by fire, in whole or in part, before the levy of the municipal taxes of such city thereon, or before the municipal taxes levied thereon shall have been collected, it shall and may be lawful for the mayor of such city or town—if there be no mayor, then the president of the board of trustees, the city comptroller, if there should be one; and if not, then the city clerk or town clerk, and the tax commissioner, if there should be one; if not, then the chairman of the finance committee of the city council, or board of trustees—to rebate or remit so much of such tax or taxes, so levied upon such property, as in their opinion should be rebated or remitted by reason of such property having been, in whole or in part, destroyed by fire.

251. Reduce or release tax or assessment.] § 2. That whenever, in any incorporated city or town in this state, any large portion of the taxable property of such city shall have been or shall hereafter be destroyed by fire, so as to seriously impair or affect the ability of the property owners of such city or town to pay taxes or special assessments thereon, and an appropriation bill has been made or passed, or special improvements ordered before such fire, and the tax or assessment for the payment or raising of the same has not been levied or collected, it may be lawful for the city council or board of trustees of any such town, to alter, revise, change, reduce or vacate, or repeal such appropriation bill, or any part of the same, and to order the discontinuance of said special improvements, or any of the same, or to reduce the amount of taxes or special assessments ordered to be levied, or assessed, or collected for any general or special purpose, and to pass a new appropriation bill; which new appropriation bill shall have the same force and effect as if the same had been passed within the time prescribed by the charter of any such city or such corporate town

252. Emergency.] § 3. Whereas a large amount of property listed for taxation in the city of Chicago, and in other cities and towns of this state, has been destroyed by fire before the taxes thereon have been paid, which taxes it would be unjust to collect, it is declared that an emergency exists that this law go into force immediately, and therefore it is enacted that this law shall be in force from and after its passage.

XIV. SEWERAGE AND WATER TAXES.

AN ACT in relation to the levy and collection of taxes for sewerage and water works in the cities of this state that may have established a system of sewerage and water works for such city. [Approved and in force April 22, 1871. L. 1871-2, p. 754. Rev. Stat., 253.]

253. Sewerage fund tax
254. Water fund tax.
255. Emergency.

253. Sewerage fund tax.] § 1. That the legislative authority of any such city which now has or may hereafter have established a system of sewerage for such city, shall have power, annually, to levy and collect a tax upon the taxable real and personal estate of any such city, not to exceed one mill on a dollar, for the extension and laying of sewers therein and the maintenance of such sewers, which tax shall be known as "The Sewerage Fund Tax," and shall be levied and collected in the same manner that other general taxes of any such city are levied and collected: *Provided, however*, that the board of public works of such city, if any, or the head of the sewer department of such city, shall first certify to such legislative authority the amount that will be necessary for such purpose.(1) [See § 62, item 29.

254. Water fund tax.] § 2. The legislative authority of any such city which now has or which may hereafter have established water works, for the supply of water to the inhabitants thereof, shall have power to annually levy and collect a tax upon the taxable real and personal estate of any such city, not to exceed one mill on the dollar, for the extension of water mains or pipes therein

(1) **Authority to repair and keep in order its streets,** is sufficient without special grant, to authorize a municipal corporation to construct drains and sewers, and, when constructed, the corporation will incidentally possess the power to pass ordinances regulating their use and the price at which private persons may tap them, and also to protect them from injury or invasion. Dillon on Mun. Corp., § 644.

If there be no constitutional limitation, the cost of making sewers for the public convenience, may be directed by the legislature to be paid out of funds provided by general taxation, or to be assessed upon the abutters, or the property specially benefitted. Dillon on Mun. Corp., § 647.

and the maintenance of such water works, which tax shall be known as "The Water Fund Tax," and shall be levied and collected in the same manner that other general taxes of any such city are levied and collected: *Provided, however*, that the board of public works of such city, if any, or the head of the water department of such city, shall first certify to such legislative authority the amount that will be necessary for such purposes, and shall further certify that the revenue or income from such water works will be insufficient therefor.

255. Emergency.] § 3. Whereas the health and good government of such cities require that they severally posses the power and authority conferred by this act upon such cities, and the officers thereof, without any delay, it is hereby declared that an emergency exists that this law should be in force from and after its passage.

XV. TAXES.

AN ACT in regard to the assessment and collection of municipal taxes. [Approved May 23, 1877. In force July 1, 1877. L. 1877, p. 61.]

256. How may be assessed and collected.

256. How may be assessed and collected.] § 1. That all cities, villages and incorporated towns, in this state whether organized under the general law or special charters, shall assess and collect their taxes in the manner provided for in article eight (8) of the act entitled "An act to provide for the incorporation of cities and villages," approved April 10, 1872, and in the manner provided for in the general revenue laws of this state; and all acts, or parts of acts, inconsistent with the provisions of this act, are hereby repealed.

XVI. SURPLUS FUND OR TAX.

AN ACT to prohibit any city, town or village in this state from receiving from the county treasurer a greater proportion of the surplus fund or tax, than shall be received by any other city, town or village within the same county. [Approved May 4, 1877, and in force July 1, 1877. L. 1877, p. 55.]

257. Proportion of tax.
258. Drawback—amount city, etc., may receive.

257. Proportion of tax.] § 1. That no city, town or village within any county in this state, shall be entitled to or shall receive

from the county treasury of such county any greater proportion of surplus of all taxes which may be collected for county purposes, than any other city, town or village within the county.

258. Drawback—Amount city, etc., may receive.] § 2. Nor shall any such city, town or village be entitled to, or receive from the county treasury any greater drawback of its proportion of the taxes paid into the county treasury, by reason of any appropriation by the county board, out of the county treasury for the making and repairing of roads and highways, the building and repairing of bridges in such county, without any such city, town or village within such county than is now allowed by law to all other cities, towns and villages within the same county. Any acts, or parts of acts, conflicting with this act are hereby repealed.

XVII. SIDEWALKS IN CITIES, TOWNS AND VILLAGES.

AN ACT to provide additional means for the construction of sidewalks in cities, towns and villages. [Approved April 15, 1875. In force July 1, 1875, L. 1875, p. 63.

259. Sidewalks by taxation.
260. What ordinance may provide.
261. In case owner neglects to construct.
262. Special tax—duty of clerk—report.
263. General officer to obtain judgment—by what laws governed.
264. When constructed by owner may obtain order.

259. Sidewalks by taxation.] § 1. That in addition to the mode now authorized by law, any city or incorporated town or village may, by ordinance, provide for the construction of sidewalks therein, or along or upon any street or part of street therein, and may, by such ordinance, provide for the payment of the whole or any part of the cost thereof by special taxation of the lot, lots or parcels of land touching upon the line where any such sidewalk shall be ordered, and such special taxation may be either by a levy upon any lot of the whole, or any part of the cost of making any such sidewalk in front of such lot or parcel of land, or by levying the whole or any part of the cost upon each of the lots or parcels of land touching upon the line of such sidewalk, *pro rata* upon each of said lots or parcels, according to their respective values—the values to be determined by the last preceding assessment thereof for the purpose of state and county taxation; or the whole or any part of the cost thereof may be levied upon such lots or parcels of land in proportion to their frontage upon such side-

walks, or in proportion to their superficial area, as may be provided by ordinance ordering the laying down of such sidewalk; and in case such ordinance shall only require the payment of a part of the cost of such sidewalk to be paid by a special tax as aforesaid, then the residue of such cost shall be paid out of any fund of such city, town or village, raised by general taxation upon the property thereof, and not otherwise appropriated.

260. What ordinance may provide.] § 2. Said ordinance shall define the location of such proposed sidewalk with reasonable certainty, shall prescribe its width, the materials of which it shall be constructed, and the manner of its construction, and may provide that the materials and construction shall be under the supervision of, and subject to, the approval of some officer or board of officers of such city, town or village, to be designated in said ordinance. Said ordinance shall be published as required by law for other ordinances of said city, town or village,(1) and may require all owners of lots or parcels of land touching the line of said proposed sidewalk to construct a sidewalk in front of their respective lots or parcels in accordance with the specifications of said ordinance, within thirty days after such publication, and in default thereof, said materials to be furnished and sidewalk constructed by said city, town or village, and the cost, or such part thereof as may be fixed in said ordinance, may be collected from the respective owners of said lots or parcels of land as hereinafter provided.

261. In case owner neglects to construct.] § 3. In case of the default of any lot owner or owners to construct the sidewalks, as required by ordinance, and the same shall be constructed by the city, town or village, the cost thereof, or such part of the cost thereof as may have been fixed by said ordinance, may be recovered of the owners so in default by an action of debt in the name of the city, town or village, against such owners respectively, in any court of competent jurisdiction, or upon the completion of the work by such city, town or village. Such ordinance may provide that a bill of the cost of such sidewalk, showing in separate items the cost of grading, materials, laying down, and supervision, shall be filed in the office of the clerk of such city, town or village, certified to by the officer or board designated by said ordinance to take charge of the construction of said sidewalk, together with a list of the lots or parcels of land touching upon the line of said sidewalk, the names of the owners thereof, and the frontage, superficial area, or assed value as aforesaid, ac-

(1) See *ante* p. 65, § 64.

cording as said ordinance may provide for the levy of said costs by frontage, superficial area, or assessed value; whereupon said clerk shall proceed to prepare a special tax list against said lots or parcels, and the owners thereof, ascertaining by computation the amount of special tax to be charged against each of said lots or parcels and the owners thereof, on account of the construction of said sidewalk, according to the rule fixed for the levy of such special tax by said ordinance, which special tax-list shall be filed in the office of said clerk; and said clerk shall thereupon issue warrants directed to such officer as may be designated in such ordinance, for the collection of the amount of special tax so ascertained and appearing from said special tax-list to be due from the respective owners of the lots or parcels of land touching upon the line of said sidewalk; and such officer shall proceed to collect such warrants in the same manner as constables are authorized to collect executions, and make return thereof, together with the moneys collected, to the clerk of such city, town or village, within sixty days from the date of their issue; and in case any such warrant shall be returned, as to the whole or any part thereof, "no property found," other warrants may issue, and proceedings by garnishment may be resorted to, as in cases of garnishment in aid of the collection of judgments at law,(1) and all moneys so collected and paid over to said clerk shall be, by him, immediately paid over to the treasurer of said city, town or village.

262. Special tax—Duty of clerk—Report.] § 4. Upon failure to collect such special tax as heretofore provided in this act, it shall be the duty of said clerk, within such time as such ordinance may provide, to make report of all such special tax, in writing, to such general officer of the county as may be authorized by law to apply for judgment against, and sell lands for taxes due county or State, of all the lots or parcels of land upon which such special tax shall be so unpaid, with the names of the respective owners thereof, so far as the same are known to said clerk, and the amount due and unpaid upon each tract, together with a copy of the ordinance ordering the construction of said sidewalk, which report shall be accompanied by the oath of the clerk that the list is a correct return of the lots and parcels of land on which the special tax levied by authority of said city, town or village, for the cost or partial cost (as the case may be) of the sidewalk in said ordinance specified, remains due and unpaid, and that the amounts

(1) Rev. Stat., p. 550, § 1. See HAINES' TREATISE, new ed., title "Garnishment."

therein stated as due and unpaid have not been collected, nor any part thereof. Said reports, when so made, shall be *prima facie* evidence that all the forms and requirements of the law in relation to making such return have been complied with, and that the special tax, as mentioned in said report, is due and unpaid.

263. General officer to obtain judgment—By what laws governed.] § 5. When said general officer shall receive the aforesaid report, he shall at once proceed to obtain judgment against said lots or parcels of land for said special tax remaining due and unpaid, in the same manner as may be provided by law for obtaining judgment against lands for taxes due and unpaid the county and state, and shall in the same manner proceed to sell the same for the said special tax due and unpaid. In obtaining said judgment and making said sale, the said officer shall be governed by the general revenue laws of the state, except when otherwise provided herein, and said general laws shall also be applicable to the execution of certificates of sale, and deeds thereon, and the force and effect of such sales and deeds; and all other laws in relation to the enforcement and collection of taxes, and redemption from tax sales, shall be applicable to proceedings to collect such special tax, except as herein otherwise provided.(1)

264. When constructed by owner may obtain order.] § 6. Whenever payment of the costs of any such sidewalk is required to be made in part by special tax, and in part out of any general fund of such city, town, or village, and the owner of any such lot or parcel of land shall construct such sidewalk in accordance with the ordinance providing for its construction, such owner shall file with the clerk of such city, town, or village, an itemized statement of the cost of such sidewalk so constructed, by him verified by affidavit, together with a certificate of the officer or board directed by such ordinance to superintend the construction thereof, that such sidewalk has been constructed and fully completed by such owner in accordance with such ordinance, and the council of such city, town, or village, shall thereupon, at its first meeting thereafter, allow and order to be issued to such owner, an order on the treasurer of such city, town, or village, for the cost of the construction of such sidewalk, less the amount of special tax chargeable to the lot or parcel of land of such owner on the line of which such sidewalk has been so constructed.(2)

See Rev. Stat., ch. 120, HAINES' TOWNSHIP ORGANIZATION LAWS, Title, "Revenue;" see also *ante*, pp. 88, 95; see also the general powers of city council concerning sidewalks, and notes of decisions relating thereto, *ante*, p. 45.

(2) For form of itemized statement, affidavit and certificate, see Div. II, *post*.

XVIII. HOUSES OF CORRECTION.

AN ACT to establish houses of correction, and authorize the confinement of convicted persons therein. [Approved April 25, 1871. In force July 1, 1871. L. 1871-2, 481. Rev. Stat., ch. 67.]

265. Cities may establish.
266. Inspectors—appointment—term of office.
267. Rules—employees—appropriations.
268. Compensation and duties of inspectors—records.
269. Books—quarterly statement—accounts.
270. Further reports—removal of officers, etc.
271. Duties of superintendent—appointment—term of office—deputy.
272. County may use house of correction.
273. Commitment of county convicts
274. Conveying convict to house of correction—fees.
275. Application of other laws, etc.
276. House of shelter for females.
277. Expenses, how paid.
278. United States convicts.
279. Bridewell changed to house of correction.
280. Salary of superintendent—record of conduct—good time.
281. Oath—bond.

265. Cities may establish.] § 1. That it shall be lawful for the municipal authorities of any city within this state to establish a house of correction, which shall be used for the confinement and punishment of criminals, or persons sentenced or committed thereto under the provisions of this act, or any law of this state, or ordinance of any city authorizing the confinement of convicted persons in any such house of correction.(1)

266. Inspectors—Appointment—Term of office.] § 2. The management and direction of any house of correction already established or which may hereafter be established in any such city, shall be under the control and authority of a board of inspectors, to be appointed for that purpose as in this section directed. The mayor of said city shall, by virtue of his office, be a member of said board, who, together with three persons to be appointed by the mayor, by and with the advice and consent of the legislative

(1) **A child cannot lawfully be imprisoned,** who has committed no crime, on the mere allegation that he is destitute of proper parental care and is growing up in mendicancy, ignorance, idleness or vice. Where an act, in reference to an institution called a reform school, of the city of Chicago, authorized the commitment there of children between the ages of six and sixteen years "who are destitute of proper parental care, and growing up in mendicancy, ignorance, idleness or vice," but who may have committed no crime, to be there "kept, disciplined, instructed, employed and governed," until they shall be reformed and discharged, or shall have arrived at the age of twenty-one years, under which a boy, between fourteen and fifteen years of age, was committed to such institution without having been charged or convicted of any crime or offence. *Held*, on *habeas corpus*, at the suit of the father, that the act under which the boy was so imprisoned, was in violation of the bill of rights embodied in the constitution, which declares the inherent and inalienable right of all persons to their personal liberty, and was therefore void. *The People ex rel.* v. *Turner*, 55 Ill. R., 280.

authority of said city, shall constitute the said board of inspectors. The term of office for the appointed members of said board shall be three years, but the members first appointed shall hold their office, respectively, as shall be determined by lot at the first meeting of said board, for one, two and three years from and after the first Monday in May, in the year of our Lord 1871, and thereafter one member shall be appointed each year for the full term of three years.

267. Rules—Employees—Appropriations. § 3. That whenever a board of inspectors have been organized as in section second of this act directed, they shall have power and authority to establish and adopt rules for the regulation and discipline of the said house of correction, for which they have respectively been appointed, and, upon the nomination of the superintendent thereof, to appoint the subordinate officers, guards and employees thereof; to fix their compensation and prescribe their duties generally; to make all such by-laws and ordinances in relation to the management and government thereof as they shall deem expedient. No appropriation of money shall be made by the said board of inspectors for any purpose other than the ordinary and necessary expenses and repairs of said institution, except with the sanction of the legislative authority of said city.

268. Compensation and duties of inspectors—Records.] § 4. Said inspectors shall serve without fee or compensation. There shall be a meeting of the entire board, at the house of correction, once in every three months, when they shall fully examine into its management in every department, hear and determine all complaints or questions not within the province of the superintendent to determine, and make such further rules and regulations for the good government of said house of correction as to them shall seem proper and necessary. One of said appointed inspectors shall visit the said house of correction once, at least, in each month. All rules, regulations or other orders of said board shall be recorded in a book to be kept for that purpose, which shall be deemed a public record, and, with the other books and records of said house of correction, shall be at all times subject to the examination of any member or committee of the legislative authority, the comptroller, treasurer, corporation counsel or attorney of any such city.

269. Books—Quarterly statement—Accounts.] § 5. The books of said house of correction shall be so kept as to clearly exhibit the state of the prisoners, the number received and discharged, the number employed as servants or in cultivating and improving the premises, the number employed in each branch of industry

carried on, and the receipts from, and expenditures for, and on account of each department of business or for improvement of the premises. A quarterly statement shall be made out, which shall specify, minutely, all receipts and expenditures, from whom received and to whom paid, and for what purpose; proper vouchers for each to be audited and certified by the inspecters, and submitted to the comptroller of said city and by him to the legislative authority thereof for examination and approval. The accounts of said house of correction shall be annually closed and balanced on the first day of January of each year, and a full report of the operations of the preceding year shall be made out and shall be submitted to the legislative authority of said city, and to the governor of the state, to be by him transmitted to the general assembly, and such report shall be published in the corporation newspaper thereof.

270. Further reports—Removal of officers, etc.] § 6. The legislative authority of said city may require such further reports and exhibits of the condition and management of such institution as to them shall seem necessary and proper, and may, with the approval of the mayor, remove any inspector of said institution. But any subordinate officer or employee may be removed by the superintendent at his discretion, but immediately upon the removal of such officer or employee, he shall report to said board the name of the person removed, and the cause of such removal.

271. Duties of superintendent—Appointment—Term of office—Deputy.] § 7. The superintendent of the said house of correction shall have entire control and management of all its concerns, subject to the authority established by law, and the rules and regulations adopted for its government. It shall be his duty to obey and carry out all written orders and instructions of the inspectors not inconsistent with the laws, rules and regulations relating to the government of said institution. He shall be appointed by the mayor by and with the consent of said board of inspectors, and shall hold his office for four years and until his successor shall have been duly appointed and qualified, but he may be removed by the inspectors at any time, when in their judgment it shall be advisable. He shall be responsible for the manner in which said house of correction is managed and conducted. He shall reside at said house of correction, devote all his time and attention to the business thereof, and visit and examine into the condition and management of every department thereof and of each prisoner therein confined, daily. He shall exercise a general supervision and direction in regard to the discipline, police and business of said house of correction. The deputy superintendent of said

house of correction shall have and exercise the powers of the superintendent in his absence, so far as relates to the discipline thereof and the safe keeping of prisoners.

272. County may use house of correction.] § 8. The board of supervisors or commissioners of any county in this state shall have full power and authority to enter into an agreement with the legislative authority of such city or with any authorized agent or officer in behalf of said city, to receive and keep in said house of correction any person or persons who may be sentenced or committed thereto by any court or magistrate in any of said counties, for any term not less than thirty days. Whenever such agreement shall have been made, it shall be the duty of the board of supervisors or commissioners for any county in behalf of which such agreement shall have been made, to give public notice thereof in some newspaper printed and published within said county, for a period not less than four weeks, and such notice shall state the period of time for which such agreement will remain in force.

273. Commitment.] § 9. In counties having such agreement with any such city, it shall be the duty of every court, police justice, justice of the peace, or other magistrate in such county by whom any person, for any crime or misdemeanor punishable by imprisonment in the county jail, shall be convicted, to commit such person to the said house of correction, in lieu of committing him to the county jail, there to be received and kept in the manner prescribed by law and the discipline of said house of correction. And it shall be the duty of such court, police justice, justice of the peace or other magistrate, by a warrant of commitment, duly issued, to cause such person so sentenced to be forthwith conveyed by some proper officer to said house of correction.

274. Conveying convict to house of correction—Fees.] § 10. It shall be the duty of the sheriff, constable or other officer in and for any county having such agreement with any such city to whom any warrant of commitment for that purpose may be directed by any court, justice or magistrate aforesaid, in such county, to convey such person so sentenced to the said house of correction, and there deliver such person to the keeper or other proper officer of said house of correction, whose duty it shall be to receive such person so sentenced, and to safely keep and employ such person for the term mentioned in the warrant of commitment, according to the laws of said house of correction; and the officers thus conveying and so delivering the person or persons so sentenced shall be allowed such fees, as compensation therefor, as shall be prescribed or allowed by the board of supervisors or commissioners of the said county.

275. Application of other laws, etc.] § 11. All provisions of law and ordinances authorizing the commitment and confinement of persons in jails, bridewells and other city prisons, are hereby made applicable to all persons who may or shall be, under the provisions of this act, sentenced to such house of correction.

276. House of shelter.] § 12. It shall be lawful for the inspectors of any such house of correction to establish in connection with the same a department thereof, to be called a house of shelter, for the more complete reformation and education of females. The inspectors shall adopt rules and regulations by which any female convict may be imprisioned in one or more separate apartments of the said house of correction, or of the department thereof called the house of shelter. The superintendent of said house of correction shall appoint, by and with the advice of the board of inspectors, a matron and other teachers and employees for the said house of shelter, whose compensation shall be fixed and provided for as in this act provided for the officers and other employees of the said house of correction.

277. Expenses.] § 13. The expenses of maintaining any such house of correction over and above all receipts for the labor of persons confined therein, and such sums of money as may be received from time to time by virtue of an agreement with a county, as in this act contemplated, shall be audited and paid from time to time by the legislative authority of such city, and shall be raised, levied and collected as the ordinary expenses of the said city.

278. United States convicts.] § 14. It shall be lawful for the inspectors of any such house of correction to enter into an agreement with any officer of the United States authorized therefor, to receive and keep in such house of correction any person sentenced thereto, or ordered to be imprisioned therein, by any court of the United States or other federal officer, until discharged by law.

279. Bridewell changed to house of correction.] § 15. That in any such city having, prior to the passage of this act, established a bridewell for the confinement of convicted persons, such institution shall, immediately upon the appointment of the inspectors in this act contemplated, be known and denominated as the house of correction of the city in which it is located.

280. Salary of superintendent—Record of conduct—Good time.] § 16. The superintendent of any such house of correction shall receive a salary per annum, to be fixed by the legislative authority of such city, to be paid quarterly. It shall be his duty to keep a record of each and all infractions of the rules and dicipline of said house of correction, with the names of each, the convict offending,

and the date and character of each offense, and every convict sentenced or committed for six months or more, whose name does not appear upon such record, shall be entitled to a deduction of three days per month from his or her sentence, for each month he or she shall continue to obey all the rules of said house of correction.

281. Oath—Bond.] § 17. The inspectors of any such house of correction and the superintendent thereof, shall, before they enter on the duties of their respective offices, take and subscribe the usual oath of office. Said inspectors and superintendent shall severally give bond to such city with sureties, and in a penal sum such as may be required by the legislative authority thereof, for the faithful performance of their duties.

282. [§ 18, repeal, ommitted; see "Rev. Stat.," ch. 131, § 5.

XIX. LIBRARIES.

AN ACT to authorize cities, incorporated towns and townships to establish and maintain free public libraries and reading rooms. [Approved and in force March 7, 1872. L. 1871-2, p. 609. Rev. Stat., ch. 81.]

OF CITIES, VILLAGES, TOWNS AND TOWNSHIPS.

283. Establishment by city—tax—fund.
284. Appointment of directors.
285. Term of office—removal.
286. Vacancies—compensation.
287. Organization—powers of directors—funds.
288. Who may use library.
289. Report of directors.
290. Council may fix penalties.
291. Donations.
292. Powers of villages, towns and townships.
293. Directors in villages, towns and townships.
294. Emergency.
295. LIBRARY ASSOCIATIONS may sell, etc., to public library—meeting—notice.
296. Vote—manner of making conveyances, etc.

283. Establishment by city—Tax—Fund.] § 1. That the city council of each incorporated city shall have power to establish and maintain a public library and reading-room for the use and benefit of the inhabitants of such city, and may levy a tax of not to exceed one mill on the dollar, annually, and in cities of over one hundred thousand inhabitants, not to exceed one-fifth of one mill annually, on all the taxable property in the city, such tax to

be levied and collected in like manner with other general taxes of said city, and to be known as the "Library Fund."

284. Directors.] § 2. When any city council shall have decided to establish and maintain a public library and reading-room, under this act, the mayor of such city shall, with the approval of the city council, proceed to appoint a board of nine directors for the same, chosen from the citizens at large with reference to their fitness for such office; and not more than one member of the city council shall be at any one time a member of said board.

285. Term of office—Removal.] § 3. Said directors shall hold office one-third for one year, one-third for two years, and one-third for three years, from the first of July following their appointment, and at their first regular meeting shall cast lots for the respective terms; and annually thereafter the mayor shall, before the first of July of each year, appoint as before three directors, to take the place of the retiring directors, who shall hold office for three years, and until their successors are appointed. The mayor may, by and with the consent of the city council, remove any director for misconduct or neglect of duty.

286. Vacancies—Compensation.] § 4. Vacancies in the board of directors, occasioned by removals, resignation, or otherwise, shall be reported to the city council, and be filled in like manner as original appointments, and no director shall receive compensation as such.

287. Organization—Powers of directors—Funds.] § 5. Said directors shall, immediately after appointment, meet and organize by the election of one of their number president, and by the election of such other officers as they may deem necessary. They shall make and adopt such by-laws, rules and regulations for their own guidance and for the government of the library and reading-room as may be expedient, not inconsistent with this act. They shall have the exclusive control of the expenditure of all moneys collected to the credit of the library fund, and of the construction of any library building, and of the supervision, care and custody of the grounds, rooms or buildings constructed, leased or set apart for that purpose: *Provided*, that all moneys received for such library shall be deposited in the treasury of said city to the credit of the library fund, and shall be kept separate and apart from other moneys of such city, and drawn upon by the proper officers of said city, upon the properly authenticated vouchers of the library board. Said board shall have power to purchase or lease grounds to occupy, lease or erect an appropriate building or buildings for the use of said library; shall have power to appoint a suitable librarian and necessary assistants, and fix their compensa-

tion, and shall also have power to remove such appointees; and shall, in general, carry out the spirit and intent of this act, in establishing and maintaining a public library and reading-room.

288. Who may use library.] § 6. Every library and reading-room, established under this act, shall be forever free to the use of the inhabitants of the city where located, always subject to such reasonable rules and regulations as the library board may adopt, in order to render the use of said library and reading-room of the greatest benefit to the greatest number; and said board may exclude from the use of said library and reading-room any and all persons who shall willfully violate said rules. And said board may extend the privileges and use of such library and reading-room to persons residing outside of such city in this state, upon such terms and conditions as said board may from time to time by its regulations prescribe. [As amended by act approved March 27, 1874; in force July 1, 1874.

289. Report of directors.] § 7. The said board of directors shall make, on or before the second Monday in June, an annual report to the city council, stating the condition of their trust on the first day of June of that year, the various sums of money received from the library fund and from other sources, and how such moneys have been expended, and for what purposes; the number of books and periodicals on hand, the number added by purchase, gift, or otherwise, during the year; the number lost or missing; the number of visitors attending; the number of books loaned out, and the general character and kind of such books; with such other statistics, information and suggestions as they may deem of general interest. All such portions of said report as relate to the receipt and expenditure of money, as well the number of books on hand, books lost or missing, and books purchased, shall be verified by affidavit.

290. Penalties.] § 8. The city council of said city shall have power to pass ordinances imposing suitable penalties for the punishment of persons committing injury upon such library or the grounds or other property thereof, and for injury to or failure to return any book belonging to such library.

291. Donations.] § 9. Any person desiring to make donations of money, personal property or real estate for the benefit of such library, shall have the right to vest the title to the money or real estate so donated in the board of directors created under this act, to be held and controlled by such board, when accepted, according to the terms of the deed, gift, devise or bequest of such property; and as to such property the said board shall be held and considered to be special trustees.

292. Powers of villages, towns and townships.] § 10. When fifty legal voters of any incorporated town, village or township shall present a petition to the clerk of the town, village or township (or trustee of schools in counties not under township organization), asking that an annual tax may be levied for the establishment and maintenance of a free public library in such town or township, and shall specify, in their petition, a rate of taxation not to exceed two mills on the dollar, such clerk (or trustee of schools in counties not under township organization) shall, in the next legal notice of the regular annual election in such town or township, give notice that at such election every elector may vote "For a.... mill tax for a free public library," or "Against a.... mill tax for a free public library," specifying in such notice the rate of taxation mentioned in said petition; and if the majority of all the votes cast in such town, village or township shall be "For the tax for a free public library," the tax specified in such notice shall be levied and collected in like manner with other general taxes of said town or township, and shall be known as the "Library Fund:" *Provided*, that such tax shall cease in case the legal voters of any such town, village or township shall so determine by a majority vote, at any annual election held therein; and the corporate authorities of such towns or villages may exercise the same powers conferred upon the corporate authorities of cities under this act.

293. Directors in villages, etc.] § 11. At the next regular election after any town, village or township shall have voted to establish a free public library, there shall be elected a library board of six directors, one-third for one year one-third for two years, and one-third for three years, and annually thereafter there shall be elected two directors, who shall hold their office for three years and until their successors are elected and qualified; which board shall have the same powers as are by this act conferred upon the board of directors of free public libraries in cities.

294. Emergency.] § 12. Whereas, all the libraries of Chicago were destroyed by the recent fire in that city, and large donations of books have been made to found a free library, and whereas no suitable building or organization exists to receive or preserve them, therefore an emergency exists that this law shall take effect immediately: therefore this act shall take effect and be in force from and after its passage.

AN ACT to enable library associations to sell and transfer their real and personal property. [Approved March 24, 1874. In force July 1, 1874.]

295. Library associations may sell, etc., to public libraries—Meeting—Notice.] § 1. That whenever any library association

organized under any law of this state, and owning any real or personal property in this state, shall desire to sell or lease the same, or any part thereof, absolutely or with conditions, to the board of directors of any free public library, organized under the laws of this state, such sale or lease may be made in the manner following, viz: The directors of such association shall call a meeting of all the members, subscribers or stockholders thereof, to be held at the rooms of said library or office of the secretary of such association, written or printed notice of the time, place and object of such meeting, and of the terms and conditions of the proposed sale or lease being first mailed, at least thirty (30) days prior to the time of such meeting, to the address of each member, subscriber or stockholder whose place of residence is known to any of the officers or directors of such association, and by publishing such notice for at least thirty (30) consecutive days next preceding the time of such meeting, in some newspaper published and of general circulation in the county where the property of said association is situate.

296. Vote—Manner of making conveyance, etc.] § 2. If the members, subscribers or stockholders representing the majority in amount of the stock of such association, shall vote, at such meeting, in favor of such sale or lease upon the terms or conditions specified in such notice, or, in case said association shall consist of two or more departments, if a majority of the members, subscribers or stockholders of each department shall vote at such meeting in favor of such sale or lease so specified, then the president and secretary shall cause a record of the proceedings of such meeting, verified by the oath of the president thereof, together with an affidavit of the service or publication of notice as herein required, to be filed in the office of the clerk of the circuit court of the county where the property of such association is situate; after which the president and secretary of the said association shall be and are hereby authorized and empowered to execute any and all necessary deeds, leases, bills of sale, or other instruments in writing, to carry out the object and intent of said vote; which, when duly executed, shall be sufficient to pass to the board of directors of such free public library all the legal and equitable title of said associations in and to the real or personal property in said instrument described as therein set forth.

XX. TOWN PLATS.

AN ACT to revise the law in relation to plats. [Approved March 21, 1874. In force July 1, 1874. Rev. Stat., ch. 109.]

297. Laying out towns, etc.
298. Certificate of surveyor—acknowledgement—record.
299. Dedication—effect of.
300. Neglect to plant corner stone, etc.
301. Penalty for selling without plat recorded, etc.

VACATION OF PLATS.

302. Of entire plat.
303. Of part of plat.
304. Cancelling plat of record.

PLATS TO BE RECORDED, ETC.

305. Plats of highways, etc., to be made and recorded.
306. Prosecuting offenders.

297. Laying out towns, etc.] § 1. Whenever the owner of lands shall wish to subdivide the same into two or more parts for the purpose of laying out a town, or making any addition to any city, village or town, or of re-subdividing any lots or blocks therein, he shall cause the same to be surveyed and a plat thereof to be made by the county surveyor or some other competent surveyor, which plat shall particularly describe and set forth all the streets, alleys, common or public grounds, and all the in and out lots or fractional lots or blocks within, adjoining or adjacent to the land so divided, giving the names, widths, courses and extent of all such streets and alleys, and numbering all lots and blocks by progressive numbers, giving their precise length and width. Reference shall also be made upon the plat to some known and permanent monument from which future surveys may be made, or, if no such monument shall exist within convenient distance, the surveyor shall, at the time of making his survey, plant, and fix in such manner that the same shall not be moved by frost, at the corner of some public ground, or, if there be none, then at the corner of some lot or block most convenient for reference, a good and sufficient stone, to be furnished by the person for whom the survey is made, and designate upon the plat the point where the same may be found.(1) [Rev. Stat. 1845, p. 115, § 17, 18, 19.

(1) **The statute having required persons laying out town plats,** or additions thereto, to mark the location of streets and public grounds by stones set in the ground, from

298. Certificate of Surveyor — Acknowledgement — Record.] § 2. The plat having been completed, shall be certified by the surveyor and acknowledged by the owner of the land, or his attorney duly authorized, in the same manner as deeds of land are required to be acknowledged. The certificate of the surveyor and of acknowledgment, together with the plat, shall be recorded in the recorder's office of the county in which the land is situated, and such acknowledgment and record shall have like effect, and certified copies thereof, and of such plat or of any plat heretofore acknowledged and certified according to law, may be used in evidence to the same extent and with like effect, as in case of deeds. [Rev. Stat. 1845, p. 115, § 20.

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which to make future surveys. where there is a discrepency between such monuments and the measurements appearing in the plat, the former will govern and control the latter in determining the location of the street. Such stones will be recognized with the same force and binding effect as original monuments erected by the government surveyors. A party laying out his land into lots and streets is a liberty to locate the streets where he chooses, and when he has erected stones to show where a street is located, and staked lots abutting on each side of the same, and sold lots with reference to it, which have been improved, and the location of the street has been acquiesced in for twenty years by the public, the purchasers of the lots and the municipal corporation taking the street in trust fo the public will be bound by the monuments in determining the location of the street, and the corporation will be enjoined if it attempts to change its actual location. And where monuments and measurements are both mentioned in the description of land conveyed in a town plat the purchaser must hold by the boundaries given by the monuments. *Lull et al.* v. *City of Chicago*, 68 Ill. R., 518.

It is not absolutely essential to the validity of a town plat that it shall be surveyed by the county surveyor. Although made by another surveyor it may still have the force of a statutory conveyance of the streets and alleys to the city or municipal corporation, in trust for the public. Repeated decisions of the supreme court of Illinois hold it to be the acknowledging and recording of the plat that vests the fee in the corporation. *Trustees* v. *Haven*, 11 Ill. R., 554; *Manly* v. *Gibson*, 13 Ill. R., 308; *Hunter* v. *Middleton*, 13 Ill. R., 50; *Gebhardt* v. *Reeves*, 75 Ill. R., 301.

It cannot be deemed essential who did the manual work of making the survey and plats, so that the same is accurately done. The conveyance derives its validity from the acknowledging and recording. Of this same class is that of objections that no corner stone is designated on the plat, when there are other monuments from which the location of the lots, streets and alleys can be ascertained with equal certainty. This is all the purpose to be accomplished by designating a stone as a corner, and it cannot be the absence of the particular monument described in the statute when another is indicated as effectual for that purpose, that vitiates and renders void a plat as a statutory conveyance for the purposes intended. *Gebhardt* v. *Reeves*, 75 Ill. R., 301.

Where land is laid ont and platted, and a square left blank without any designation for its purpose, except it was not divided into lots, and no allusion made to it by the dedicators in their certificate, it was held not a dedication to public use, under the statute. But where the proof showed the sale of lots around the same at an enhanced price, and an intention to dedicate to public use, and a long acquiescence in the use as a public park, this was held to be a dedication at common law, to the public use. And where proof of the contemporaneous acts of the original proprietors clearly showed an intention that the same should remain a public square and the proof also showed a long acquiescence in such dedication on the part of the village authorities, it was held a court of equity would enjoin the trustees of the village from the erection of a town hall upon the same, as being an obstruction and inconsistent with the object of dedication as a public common. *Village of Princeville* v. *Auten et al.*, 77 Ill. R., 325.

Where nothing appears to indicate for what purpose a grant of land is made to the public, parol evidence is admissible to show the object to which it was so devoted. But when the intention is made manifest at the time of the dedication, extrensic evidence will not be received to show an intention to devote the land to a different use. And a county has no inherent right to appropriate the exclusive use of a public square in a town, not dedicated expressly to it, but to the public or citizens generally. It has no more right than individual to prevent or disturb the enjoyment of the inhabitants in any public grounds dedicated to their use. *Village of Princeville* v. *Auten et al.*, 77 Ill. R., 325.

On the subject of town plats, dedication, streets and public grounds, see *ante* p. 40, 43, and notes thereto, of decisions.

299. Dedication—Effect of.] § 3. The acknowledgment and recording of such plat shall be held in law and in equity to be a conveyance in fee simple of such portions of the premises platted as are marked or noted on such plat as donated or granted to the public, or any person, religious society, corporation or body politic, and as a general warranty against the donor, his heirs and representatives to such donee or grantee for their use or for the use and purposes therein named or intended, and for no other use or purpose. And the premises intended for any street, alley, way, common or other public use in any city, village or town, or addition thereto, shall be held in the corporate name thereof in trust to and for the uses and purposes set forth or intended.(1) [Rev. Stat. 1845, p. 115, § 21.

300. Neglect to plant corner stone, etc.] § 4. Whoever shall lay out any town or make any addition to any city, village or town, or re-subdivide any lots or blocks therein, and neglect to plant any corner stone when required by this act, or shall survey the same or cause it to be surveyed in any other manner than that which is prescribed in this act, shall be fined in any sum not less than $25 nor exceeding $100. [Rev. Stat. 1845, p. 116, § 24.

301. Penalty for selling without plat recorded, etc. § 5. Whoever shall sell or offer for sale, or lease for any time exceeding five years, any lot or block in any town, city or village, or any addition thereto, or any re-subdivision of any lot or block therein, before all the requisitions of this act have been complied with, shall be fined $25 for each lot or block or part thereof so disposed of, offered for sale or leased. [Rev. Stat. 1845, p. 116, § 25.

VACATION OF PLATS.

302. Of the whole plat.] § 6. Any such plat may be vacated by the owner of the premises at any time berore the sale of any lot therein, by a written instrument declaring the same to be va-

(1) **Making and recording a town plat is called a statutory dedication** of the streets and public grounds thereon described as such. In this case the legal title to the land thus dedicated vests in the municipal corporation then existing or thereafter coming into existence, in trust for the public for the purposes intended. In case of dedication otherwise—or giving of the land for purposes aforesaid—without the formalities prescribed by the statute, called a common law dedication, the legal title remains in the owner, with the same rights of the public to use the same as in case of a statutory dedication. When land is described on a recorded plat as "public ground" it is an unrestricted dedication to the public use. In such case the use is indefinite and may vary according to circumstances. The care thereof devolves upon the local authority, or body corporate is its guardian, who may direct its use subject to the law, and the courts in case of any abuse of the trust. In such case as between a municipal corporation holding title as aforesaid to the ground for public uses without restriction, and the general public, the legislature may divest and regulate the purposes for which the public may use it. Where a plat of a town duly recorded contained a block marked "public grounds," and there is no incorporation of the town, the power of directing what public use shall be made of such public ground devolves upon the legislature, as the representation of the whole people. *C. R. I. & P. R. R. Co.* v. *City of Joliet*, 79 Ill. R., 25.

cated, executed, acknowledged or proved, and recorded in like manner as deeds of land; which declaration being duly recorded shall operate to destroy the force and effect of the recording of the plat so vacated, and to divest all public rights in the streets, alleys and public grounds, and all dedications laid out or described in such plat. When lots have been sold, the plat may be vacated in the manner herein provided by all the owners of lots in such plat joining in the execution of such writing. [L. 1847, p. 166, § 1.

303. Of part of plat.] § 7. Any part of a plat may be vacated in the manner provided in the preceding section, and subject to the conditions therein prescribed: *Provided*, such vacation shall not abridge or destroy any of the rights or privileges of other proprietors in such plat: *And, provided, further*, that nothing contained in this section shall authorize the closing or obstructing of any public highway laid out according to law. [L. 1847, p. 167, § 3.

304. Canceling plat of record.] § 8. When any plat or part thereof is vacated, the recorder in whose office the plat is recorded shall, upon the recording of such vacation, write in plain letters across the plat or part so vacated the word "vacated," and shall also make a reference on the same to the volume and page in which the instrument of vacation is recorded.

PLATS TO BE RECORDED, ETC.

305. Plats of highways, etc., to be made and recorded.] § 9. Whenever any highway, road, street, alley, public ground, toll-road, railroad or canal is laid out, located, opened, widened or extended, or the location thereof altered, it shall be the duty of the commissioners, authorities, officers, persons or corporations, public or private, laying out, locating, opening, widening, extending or altering the same, to cause a plat thereof showing the width, courses and extent thereof, and making such reference to known and established corners or monuments that the location thereof may be ascertained, to be made, and recorded in the office of the recorder of the county in which the premises taken or used for the same, or any part thereof, are situated, within six months after such highway, road, street, alley, public ground, toll-road, railroad or canal is laid out, located, opened, widened or extended, or the location thereof altered; and when any highway, road, street, alley, public ground, toll-road, railroad or canal is vacated, the order, ordinance or other declaration vacating the same shall be in like manner recorded. This act shall not be construed to alter or affect any law specifically providing for the recording of any such plat, or to require the same to be recorded sooner than is so spe-

cifically provided; except that any requirements to record such plat in any other place than is provided herein shall not excuse the parties from complying with this act. Whoever shall refuse or neglect to comply with this section shall forfeit $25, and the like sum for every month he shall continue in such refusal or neglect after conviction therefor, to be recovered before any justice of the peace of the county, in the name of the county, one-half to the use of the county and the other half to the use of the person complaining. [Rev. Stat. 1845, p. 487, § 33.

306. Prosecuting offenders.] § 10. Whenever it shall come to the knowledge of the recorder of deeds of any county that any of the provisions of this act have been violated, it shall be his duty to notify the state's attorney of the fact, and the state's attorney shall immediately institute suit, and prosecute the same to final judgment against the person offending.

XXI. VACATION OF STREETS, ALLEYS AND HIGHWAYS.

AN ACT to revise the law in relation to the vacation of streets and alleys. [Approved March 24, 1874. In force July 1, 1874.] Rev. Stat., Ch. 145.

307. Three-fourths vote required—damages.
308. Rights of adjoining owners.

307. Three-fourths vote required—Damages.] § 1. That no city council of any city, or board of trustees of any village or town, whether incorporated by special act or under any general law, shall have power to vacate or close any street or alley, or any portion of the same, except upon a three-fourths majority of all the aldermen of the city or trustees of the village or town authorized by law to be elected; such vote to be taken by ayes and noes, and entered on the records of the council or board. And when property is damaged by the vacation or closing of any street or alley, the same shall be ascertained and paid as provided by law.(1) [See Rev. Stat.. "Eminent Domain," ch. 47. L. 1865, p. 130, § 1.

(1) **Where a street or alley, the fee of which has passed to the corporation** by the making and recording of a plat, is vacated by the corporate authorities, and its use abandoned, the fee that was in the city or town will revert to the original owner who dedicated the same, and not to the abutting lot owners, and neither the legislature nor the corporate authorities can divest such owner of it. The grant of a lot abutting upon such a street or alley is distinguishable from a grant of land upon an ordinary highway. In the latter, the public having but an easement in the land used as a highway, a grant by the owner passes the title subject to the easement, while in the former the title to the street or alley having passed to the municipality, the original proprietor has no title whatever in the same to convey. In the one case, therefore, in vacation and abandonment, the grantee takes the title unincumbered by the easement, while in the other he takes no title whatever beyond the boundaries of his lot. *Gebhardt* v. *Reeves*, 75 Ill. R., 302.

308. Rights of adjoining owners.] § 2. When any street, alley, lane or highway, or any part thereof, has been or shall be vacated under or by virtue of any act of this state or by order of the city council of any city or trustees of any village or town, or by the commissioners of highways, county board, or other authority authorized to vacate the same, the lot or tract of land immediately adjoining on either side shall extend to the central line of such street alley, lane or highway or part thereof so vacated, unless otherwise specially provided in the act, ordinance or order vacating the same, unless in consequence of more of the land for such street, alley, lane or highway having been contributed from the land on one side thereof than the other, such division is inequitable, in which case the street, alley, lane or highway so vacated shall be divided according to the equities of the adjoining owners. [L. 1865, p. 1830, § 1.

DIVISION II.

FORMS, AND OTHER USEFUL MATTER RELATING TO CITIES AND VILLAGES.

I. GENERAL FORMS.

Whilst the provisions of the act for the incorporation of cities and villages, in terms refers in general to cities, by the provisions of articie XI, it applies as well, to village corporations. See *ante* p. 114, § 185. Hence most of the forms here given, where the word "city" is used are equally applicable in case of villages, by changes to suit the occasion.

Form of petition to mayor and council to become incorporated as a city under general law.

[See *ante* p. 17, § 1.]

To the honorable the mayor and council of the city of ———, State of Illinois:

The undersigned, comprising one-eighth of the legal voters of the city of ———, State of Illinois, do respectfully petition that you submit the question as to whether such city shall become incorporated under the act of the general assembly, entitled "An act to provide for the incorporation of cities and villages," to a vote of the electors of such city, in accordance with the provisions of said act in such cases made and provided.

Dated this —— day of ———, 18—.

[*To be signed by one-eighth of the legal voters of such city.*]

Evidence should properly accompany the foregoing petition, showing that it is signed by the requisite number of legal voters. This may be by a certificate of the clerk having custody of the returns of the last preceding municipal election.

The submission of the question to a vote of the electors should be by a resolution or order of the mayor and council, entered upon the journal of the council. The following is suggested as an appropriate form thereof:

Form of order of mayor and council, submitting question of incorporation under general law, to vote of electors.

Whereas, the petition of A. B., C. D., E. F. and [*state number*] others, to the mayor and council, is this day presented, praying that the question as to whether the city of ——— shall become incorporated under the act of the general assembly, entitled "An act to provide for the incorporation of cities and villages," be submitted to a vote of the electors of said city in accordance with the provisions of said act in such cases made and provided.

And it appearing that said petitioners are legal voters, and that they comprise one-eighth of the legal voters of said city voting at the last preceding municipal election, the prayer thereof is granted.

And, thereupon, it is ordered that such question be submitted accordingly, and that for that purpose an election be held in the several wards and pre-

cincts in said city on the —— day of ———, 18—, at the several places of holding the last municipal election therein, and that the following persons are designated to act as judges at such election, to-wit: A, B, C, etc.

If the places of holding the last municipal election are not deemed proper, other places may be provided, the council having authority to appoint the time and *place* or *places* at which the vote may be taken. See *ante* p. 18, § 1.

Form of notice by mayor to vote on question of incorporation of city under general law.

[See *ante* p. 18, § 2.]

ELECTION NOTICE FOR INCORPORATION UNDER GENERAL LAW.

Public notice is hereby given that, in accordance with a petition for that purpose, by the requisite number of legal voters, an election will be held in the several wards and precincts of the city of ———, state of Illinois, on the —— day of ———, 18—, at which a vote of the electors will be taken on the question as to whether such city shall become incorporated under the act of the general assembly, entitled "An act to provide for the incorporation of cities and villages."

The several places of holding said election have been appointed at, and will be held at the following places, to-wit:

In the first ward at [*state the place where*].

In the second ward, etc., [*setting forth the place of holding the election in each ward as appointed by the council*].

L. M., Mayor.

Attest: O. P., City Clerk.

The election in cases aforesaid should be conducted and the vote canvassed in the manner prescribed by the general election law of the state. See HAINES' TOWNSHIP ORGANIZATION LAWS, Title, ELECTIONS.

Form of returns of votes by judges, cast at election for incorporation of a city.

[See *ante*, p. 18, § 3.]

State of Illinois, }
City of ———. } ss.

At an election held at [*state the place, city, ward and precinct*] on the —— day of ———, 18—, to decide whether the city of ——— will become incorporated under the general law of the State of Illinois, for the incorporation of cities and villages, the following number of votes were cast for and against said proposition, to wit:

There were cast, "For city organization under general law," [*state the number*,] votes.

There were cast "Against city organization under general law," [*state the number*,] votes.

Certified by us:

A. B.
C. D. } Judges of Election.
E. F.

Attest: G. H. }
O. P. } Clerks.

Form of result of canvass of votes for incorporation of city under general law, to be entered on records of city.

State of Illinois, } ss.
City of ———. }

Be it know that one-eighth of the legal voters of the city of ———, voting at the last preceding municipal election, having on the —— day of ———, 18—, petitioned the mayor and council thereof to submit the question as to whether such city would become incorporated under the act of the General Assembly, to provide for the incorporation of cities and villages, to a vote of the electors in such city, and said question having been duly submitted to a vote thereof, on the —— day of ———, 18—, and said vote being taken at the election for that purpose duly held in said city on the day last aforesaid, and the returns being duly made and canvassed, the following is the result thereof: For city organization under general law, ——— votes were cast; Against city organization under general law, ——— votes were cast. There being a majority of —— votes in favor [*or* against] of city organization under general law.

The law provides that a certified copy of the result of any election for incorporating under the general law, shall, within three months after organization, be filed in the office of the recorder of deeds of the county, and also in the office of the Secretary of State. See *ante*, p. 24, § 13. The following may be the form of the certificate in such cases:

Form of certificate to accompany copy of result of election.

State of Illinois, } ss.
City of ———. }

I, A. B., city clerk of said city of ———, do hereby certify that the foregoing is a true and correct copy of the original entry thereof as the same appears entered upon the records of said city, now in my custody.

{ L. S. } In witness whereof, I have hereunto set my hand, and affixed the seal of said city, this —— day of———, 18—.

A. B., City Clerk.

In case an incorporated town desires to become incorporated as a city, under the general law, according to § 4, *ante* p. 19, the forms before given for changing from a city charter, can be used in this case, by slight changes to suit the case of an incorporated town.

Form of petition to county judge for organization of city of contiguous territory.

[See *ante*, p. 19, § 5.]

To the county judge of ——— county, Illinois:

The undersigned petitioners respectfully represent that they are legal voters residing within the following contiguous territory situated in said county, in area not exceeding four square miles, and which has resident thereon a population of not less than one thousand inhabitants, and is not already included within any incorporated town or city, to wit: [*Here describe the territory by government sub-divisions or other mode as may be most convenient.*] That it is desired that said territory may become incorporated as a city, and that the following are defined as the boundaries thereof, to wit: [*Here set forth the proposed boundaries.*] That the number of inhabitants residing within such limits is [*state the number*]

and that the name of such proposed city is [*state the name*]. Said petitioners therefore pray that the question be submitted to the legal voters residing within such limits, whether they will organize as a city under the act of the general assembly providing for the incorporation of cities and villages. And said petitioners will ever pray, etc.

Form of notice by county judge of election for incorporation of city of contiguous territory.

[See ante, p. 20, § 5.]

Public notice is hereby given, that a petition having been on the —— day of ———, 18—, filed in the office of the county clerk of ——— county, Illinois, addressed to the county judge of said county, signed by fifty legal voters of the following contiguous territory in said county, to wit: [*Set forth the territory as in the petition.*] Setting forth in said petition that it is desired that said territory may become incorporated as a city, with the following boundaries to wit: [*Set forth the boundaries as in the petition.*] That the number of inhabitants residing within such limits is [*state the number*]. That the name of such proposed city is [*state the name*]; and praying that the question be submitted to the legal voters residing within such limits, whether they will organize as a city under the incorporation act of the General Assembly, providing for the incorporation of cities and villages. That said county judge has fixed the time and place within the boundaries aforesaid, at which an election may be held to determine such question, and named the persons to act as judges in holding the same, to wit: A., B. and C.; and that, in accordance therewith, an election will be held on the —— day of———, 18—, at———, within the territory aforesaid, to determine the question aforesaid.

Given under my hand this —— day of———, 18—.

L. M., County Judge.

The canvass of votes in case of election for incorporation of a city of contiguous territory, may be conducted in the manner heretofore given for canvassing votes in like case. See *ante*, p. 154.

Form of result of election in contiguous territory to become incorporated, to be entered on records of county court.

[See *ante*, p. 20, § 5.]

State of Illinois, } ss.
——— County. }

Be it known that a petition having been on the —— day of ———, 18—, filed in the office of the county clerk of said county, addressed to the county judge of such county, signed by fifty legal voters of the following contiguous territory in said county, to wit: [*Set forth the territory*]. Setting forth in said petition that it is desired that said territory become incorporated as a city, with the following boundaries, to wit: [*State the boundaries*]. That the number of inhabitants residing within such limits was [*state the number*]. That the name of such proposed city be [*state the name*]; and praying that the question be submitted to the legal voters residing within such limits, whether they would organize as a city under the incorporation act of the General Assembly, providing for the incorporation of cities and villages. That the county judge fixed upon the —— day of ———, 18—, as the time, and [*state the place*] as the place within the boundaries aforesaid, at which an election might be held to determine the question aforesaid, and named the persons to act as judges in holding the same, to wit:

A., B. and C. That in accordance therewith, the county judge, on the—— day of ———, 18—, gave notice of such election by causing ten notices to be posted in public places within such proposed city. That upon a canvass of the returns of such election duly made, the following is the result thereof: There were cast at said election, "For city organization under general law," —— votes. "Against city organization under general law," —— votes.

It is proper that the action of the president and board of trustees of a town, in calling and giving notice of the election of city officers, in changing to a city organization, under § 7 *ante* p 21, should be entered upon the journal of the proceedings of the board. The following may be the form of such entry:

Form of entry on journal of trustees of a town in calling and giving notice of city election.

[See *ante*, § 7, p. 21.]

Whereas, at an election duly held in the incorporated town of ———, [*or village of* ———], on the —— day of ———, 18—, to determine whether said town [*or* village] would become incorporated as a city; and it appearing by the returns of said election duly canvassed, that the result thereof was in favor of becoming incorporated as a city, an election is hereby called for city officers, to be held on the —— day of ———, 18—, and that the following be the places of holding such election, to wit: [*here state the place or places designated*]; and that notice of said election be given by [*state the manner of giving notice, according to* § 7, *ante, p.* 21].

That the following persons are appointed judges to hold such election, to wit:———.

And that the following persons are appointed clerks, ———.

Form of notice by president and trustees for election of city officers, in case of change of organization.

[See *ante*, p. 21, § 7.]

NOTICE OF ELECTION OF CITY OFFICERS.

Whereas, the legal voters of the incorporated town of ———, did, at an election held therein on the —— day of ———, 18—, vote to become incorporated as a city under the general laws of this state.

Notice is therefore hereby given by the president and board of trustees of said town, that an election has been called, and will be held in said town of ———, on the —— day of ———, 18—, at the following places, to wit: [*here set forth the place or places of holding the election,*] for the election of the following city officers, to wit: one mayor, ——— aldermen, a city clerk, a city attorney, and a city treasurer.

Dated this —— day of ———, 18—.

[*To be signed by the president and trustees*].

For forms of canvass of votes and entry of result on the records, see form given for annual city elections.

Where it is voted by the inhabitants of contiguous territory to become incorporated as a city, under § 5, *ante*, p. 19. It is provided by § 8, *ante*, p. 22, that the county judge shall give notice of the first city election, and

proper other duties relating thereto. The forms given for action of board of trustees, in regard to the first city election, may be used in action by the county judge by changes to suit the occasion.

Form of copy of proceedings where city or village becomes incorporated under general law, to be filed with recorder.

[See *ante*, § 13, p. 24.]

State of Illinois, } ss.
City of ———. }

Council Chamber, ———, 18—.

The city council of ——— met at a regular [*or* special] meeting, at ———, at the hour of —— o'clock, —. m., ———, 18—; the following aldermen being present: [*Names of aldermen present*].

A quorum being present, the council proceeded to business; the mayor presiding, [*or as the case may be*].

The following among other proceeding were had:

Ald. A. moved that the council proceed to canvass the returns of the election, held in said city on the —— day of ———, 18—, on the question as to whether said city should become incorporated under the general incorporation law of this state.

Which was decided in the affirmative.

Whereupon, the council proceeded accordingly to canvass the returns aforesaid, and having duly canvassed the same, declared the following as the result thereof: [*Here set forth a copy of the entry of the result of the election, as the same appears*].

On motion of Ald. B., it is ordered that the city clerk file in the office of the recorder of deeds of ——— county, a certified copy of the entry made aforesaid, of the canvass of the votes showing the result of the election aforesaid, and a like copy in the office of the secretary of state, within the time prescribed by law.

Form of certificate of city or village clerk to the foregoing transcript.

State of Illinois, } ss.
City of ———. }

I, A. B., city clerk of said city of ———, do hereby certify that the foregoing [*or* annexed] transcript is a true copy of the original entry thereof, as the same appears entered upon the records of said city, now being and remaining in my said office of city clerk.

{ L. S. } In witness whereof, I have hereunto set my hand and affixed the seal of said city, this —— day of ———, 18—.

A. B., City Clerk.

The foregoing form of transcript and certificate can be changed to suit the occasion of proceedings by a board of trustees or the county judge.

Form of journal of proceedings of city council.

[See *ante* p. 30, § 40.]

State of Illinois, } ss.
City of ———. }

Council Chamber, ———, 18—.

The city council of the city of ——— met at———, at the hour of —— o'clock — M., ———, 18—. The following aldermen being present: [*Set forth the names.*]

The following aldermen were absent: [*Set forth the names.*]

A quorum being present, the council proceeded to business, the mayor presiding; [*or* the mayor being absent, alderman A. was chosed to preside in his absence].

Ald. B. presented the petition of James Jackson, Asa Jenkins, Peter Wilkins and one hundred others, praying that a sidewalk be constructed on the north side of First street, which, on his motion, was referred to the committe on streets.

Ald. G., from the committee on finance, to whom was referred the matter of the following resolution:

Resolved, That ———.

Reported the same back, with the recommendation that it be adopted.

The report was concurred in, and the resolution was adopted.

Ald. E., from the committe on ———, to which was referred a proposed ordinance No. —, entitled, "An ordinance," etc., reported the same back, with the recommendation that the same do pass.

And the question being on the passage thereof.

The yeas and nays being taken, it was decided in the affirmative [*or* negative].

Yeas.....10
Nays..... 5

Those voting in the affirmative were [*state the names*].

Those voting in the negative were [*state the names*].

So the ordinance was passed.

Ald. F., from the select committee of three, to whom was referred the following resolution:

Resolved, That, etc.

Reported the same back, with the recommendation that it be adopted.

The report was concurred in, and the resolution adopted, [*or*

The report was not concurred in, and the resolution was lost].

On motion of Ald. C. a committee of three was appointed, consisting of aldermen C., D. and F., to prepare and report an ordinance on the subject of———.

Ald. B. introduced an ordinance entitled, "An ordinance," etc., which, on his motion, was referred to the committee on———.

Ald. C. offered the following resolution:

Resolved, That [*set forth the words of the resolution*].

Which was adopted, [*or* which was not adopted, *or* which, on motion of Ald. E., was laid on the table, *as the case may be*, *or* which, on motion of Ald. D., was referred to the committee on———].

The presiding officer laid before the council the following communication from the mayor, the same being his objections to an ordinance entitled, "An ordinance," etc., passed at the last regular meeting of the council. Said ordinance being returned therewith. Said communication being as follows:

[*Here set forth the veto message.*]

And the question recurring upon the reconsideration of said ordinance, entitled, "An ordinance," etc., the question being, "Shall such ordinance pass, the mayor's objections to the contrary notwithstanding?" it was decided in the affirmative.

Yeas.....15
Nays..... 1

Those voting in the affirmative were [*state the names.*]

Those voting in the negative were [*state the names*].

So the ordinance was passed, the mayor's objection to the contrary notwithstanding.

Ald. F. offered the following resolution:
Resolved, That, etc.
Ald. F. offered the following amendment to the foregoing resolution. Add thereto the following words:
[*Here insert the words.*]
Ald. H. moved to amend the amendment by adding thereto the following words:
[*Here insert the words.*]
Ald. J. moved to refer the resolution and pending amendments to the committee on———.
Ald. L. moved to lay the whole subject on the table.
Whereupon, Ald. N. moved that the council adjourn.
Which motion to adjourn was decided in the negative.
The question being taken on the motion of Ald. L., to lay the resolution and pending amendments on the table, it was decided in the negative.
The question being thereupon taken on the motion of Ald. J., to refer the resolution and pending amendments to the committee on———, it was decided in the negative.
The question thereupon recurring on the amendment of Ald. H. to the original amendment, it was lost.
And the question being taken on the amendment of Ald. G., to the resolution last aforesaid, it was also lost.
And the question recurring upon the adoption of the original resolution, it was decided in the affirmative.
So the resolution was adopted.
On motion of Ald. B., the council adjourned.

The foregoing is a general form of entry of proceedings where no rules on the subject have been prescribed. The form of entries and order of business will be varied in case rules are adopted on the subject. Where special rules exist, affecting the order of the proceedings, the entries in this regard are expected to conform thereto.

In case of reports of committees, where the subject referred to them is in the form of resolution, ordinance, or the like, and the only recommendation is that the resolution be adopted, or that the ordinance do pass; there is no separate motion to concur in the report. The only recommendation being the adoption of the measure or resolution proposed, the question should be taken directly on its adoption. This being decided it disposes of the whole question of the report. The formal motion to adopt or concur in the report of a committee arises where a committee reviews the subject referred to them, and submit their views or conclusions in a general way. A formal vote on adopting or concurring in the report of the committee in such case goes to the subject of the views and conclusions expressed in the report. If the report is accompanied by a resolution, ordinance, or other like proposition, the proper mode is that a separate vote be taken on the adoption or passage thereof, in the usual form, as in other cases.

When a resolution, ordinance or matter of that nature is referred to a committee, and the same is reported back, the usual practice under special rules is, that the subject, or matter so reported, be placed in some order of

business, to be taken up and acted on when that order of business is reached. The matter is not expected to be disposed of at the time of making the report, unless the rules are suspended for that purpose. But in the absence of special rules on the subject, the matter reported will be in order for action in accordance with the examples given in the preceding precedents.

In the preceding form it will be observed that an example is given of entries in the journal of proceedings, where, while the principal proposition is pending, several subsidiary motions are interposed, all of which is liable to occur in an assembly of experienced parliamentarians.(1)

It is not intended to be understood, in giving the foregoing examples of entry of proceedings, that other forms sometimes used are not equally proper. The mode of expression and style of entering the proceedings in the examples given is believed, however, to be the most proper form for such proceedings, in use by deliberative assemblies.

A form of entering motions prevails to some extent as follows:

Ald. A. moved that the select committee on ———, to whom was referred the matter of ———, be discharged from further consideration of said subject. Carried, [*or* lost].

A shorter and equally appropriate form of entering the foregoing motion would be thus:

On motion of Ald. A., the select committee on ———, to whom was referred the matter of ——— were discharged from further consideration of said subject.

The foregoing form of proceedings will serve as well in proceedings by boards of trustees of villages, by changing the word "city" to "village;" the words, "city council," to "board of trustees;" and the word "Ald." may be properly changed to "Mr."

In parliamentary law, governing deliberative assemblies, the same as in the law relating to judicial proceedings, there are certain technical words and terms which in good practice should be observed. They should especially be regarded in entering proceedings in the journal. In speaking of ordinances, we say: The ordinance has *passed*, [or, is *rejected*.] The resolution is *adopted*, [or, is *lost*.] The motion was decided in the *affirmative*, [or *prevailed*, or, was *lost*, or, was not agreed to, or, was decided in the *negative*.] The report was *concurred in*, [or was not *concurred in*.]

In the introduction of business in deliberative assemblies in observing parliamentary terms, petitions are *presented*, resolutions are *offered*, and ordinances are *introduced*. In good practice these terms should be observed accordingly as well in debate as in the entry of the proceedings on the journal.

(1) An excellent precedent for a journal of proceedings of a deliberative assembly, is found in the journal of the proceedings of the constitutional convention of Illinois, in 1869–'70. This body contained a large number of experienced parliamentarians, and the clerks were men of much experience in the capacity in which they acted.

Special Meetings.—The manner of calling special meetings of the council should be regulated by ordinance on that subject. In the absence of such regulation, the proper mode of proceeding would be a written notice, signed by the mayor, or three aldermen, delivered to each alderman, or left at his place of business or abode, or addressed to him through the post-office.

The following may be the form of such notice:

Form of notice of special meeting of council.

[See *ante*, p. 31, § 45.]

City of———.

To A. B., Alderman.

Sir:—You are hereby notified that the undersigned, the mayor of said city of———, [*or* three aldermen], have called a special meeting of the city council, to meet at———, at the hour of —— o'clock, —. m., on the —— day of———, 18—.

Dated this —— day of———, 18—. A. B., Mayor.

The general incorporation law does not require that the object of a special meeting of the city council shall be stated in the notice of the same.

Form of objections or veto of mayor

[See *ante*, p. 31, § 46.]

To the city council of the city of———.

An ordinance having been passed by the city council, at the last meeting thereof, entitled: "An ordinance," etc., [*set forth the title of the ordinance*], and the same being deposited in the office of the city clerk, and having duly examined its provisions and considered the same, I herewith return said ordinance to the council without my approval, and with my objections thereto, as follows: [*Here set forth the objections*].

A. B., Mayor.

Minority Representation.—It is held that, at the first election for city officers under the general law, the question of minority representation, so called, may be voted upon as a matter of course, without any formal submission of the question by the corporate authorities; see *ante*, p. 34, note 1; But submission of the question at any subsequent time requires a petition, and contemplates action by the city council.

The following forms are suggested for this purpose:

Form of petition for minority representation in city council.

[See *ante*, p. 33, § 53.]

To the honorable, the city council of the city of———, State of Illinois.

The undersigned petitioners, legal voters and equal in number to one-eighth the number of legal votes cast at the next preceding general city election in said city, respectfully petition that the question of minority representation in the city council so called, may be submitted to a vote of the voters of said city, in accordance with the statute in such cases made and provided.

And said petitioners will ever pray.

Form of submission by city council, of question of minority representation to a vote at city election.

State of Illinois, } ss.
City of ———. }

Whereas, a petition of legal voters equal in number to one-eight the number of legal votes cast at the next preceding general city election in said city having been presented to the city council, praying that the question of minority representation in the city council, so called, be submitted to a vote of the voters of the city of ———, pursuant to the statute in such case made and provided. It is therefore ordered, that said question be and the name is hereby submitted, to be voted upon by the voters of said city at the next general election, to be held on the —— day of ———, 18—.

Holding Elections.—The law provides that the city council shall designate the places of holding city elections, and appoint the judges and clerks thereof. See *ante* p. 35, § 56. The action of the council in this regard should be entered on the journal of their proceedings, as in other cases. The form of such entry will be simple, and a precedent here would seem to be unneccessary. The city clerk should be directed to give notice of the election. The following may be the form of election notice.

Form of notice of city election.

[See *ante* p. 35, § 56.]

ELECTION NOTICE.

Notice is hereby given that on [*give the date*] at [*give the place of holding the election and the names of the precinct, ward or district*] in the city of ———, an election will be held for [*give the title of the several offices to be filled*], which election will be opened at eight o'clock in the morning, and continue open until seven o'clock in the afternoon of that day.

Dated this —— day of ———, 18—.

A. B., City Clerk.

Form of oath of judges and clerks of election.

I do solemnly swear [*or* affirm, *as the case may be*] that I will support the constitution of the United States and the constitution of the State of Illinois, and that I will faithfully discharge the duties of the office of judge of election [*or* clerk, *as the case may be*] according to the best of my ability.

Form of canvass and return of votes by judges of election, at a city or village election.

At an election held at [*state the place, and number of the ward*], in the city [*or* village] of ———, in the State of Illinois, on the —— day of ———, in the year of our Lord one thousand eight hundred and ——, the following named persons received the number of votes annexed to their respective names, for the following described offices, to-wit:

O. P. had —— votes for alderman of the *first* ward of said city.

[*And in the same manner for any other person voted for.*]

Certified by us:

A. B., }
C. D., } Judges of Election.
E. F., }

Attest: G. H., } Clerks of Election.
I. J., }

Statement of canvass of votes at a city or village election, to be entered on the journals.

State of Illinois, } ss.
City of ——. }

The following is a statement of the canvass of the returns of an election as made pursuant to law, by the judges thereof, at an election held in the city of ——— [*or* village of], in the State of Illinois, on the —— day of ———, 18—; it appearing therefrom that the following persons received the number of votes set opposite their respective names, as follows, to-wit:

A. B. received —— votes for mayor.
C. D. received —— votes for mayor.
[*And so on, according to the facts.*]

It is thereupon declared as the result of said election, that A. B., having received the highest number of votes for the office of mayor, is duly elected to said office.

[*Stating the result as to each office.*]

Special Elections.—The foregoing forms for general elections can be used for special elections, with slight changes to suit the occasion.

Form of notice of special election by mayor, clerk, aldermen or trustees.

[See *ante* p. 36, § 60.

SPECIAL ELECTION NOTICE.

Notice is hereby given that by reason of vacancies which have occurred in the office of aldermen, in the following wards of the city of ———, State of Illinois, as follows, to-wit: [*here set forth the wards, by number, in which vacancies exist, and whether one or more vacancies*]. So that there is not a quorum in office of the city council [*or* board of trustees]. The undersigned, the mayor of said city, has therefore appointed the —— day of ———, 18—, as the time at which a special election will be held in said city, to fill the various vacancies aforesaid, in the wards and at the places following, to-wit:

In the *first* ward of said city at ———, for the election of *one* alderman.
In the second ward of said city at ———, for the election of two aldermen.
[*And so on according to the facts.*]
Given under my hand this —— day of ———, 18—.

A. B., Mayor.

Form of appointment of judges of election by mayor, clerk, alderman, etc.

State of Illinois, } ss.
City of ——. }

To A., B. and C.:

By reason of vacancies which have occurred in the office of aldermen in the following wards of said city of ———, as follows, to-wit: [*here set forth the wards by number, showing the vacancies, as in the notice of election*]. So that there is not a quorum in office of the city council [*or* board of trustees]. The undersigned, the mayor of said city, has therefore appointed the —— day of ———, 18—, as the time at which a special election will be held in said city to fill the various vacancies aforesaid, and does hereby appoint you, the above named A., B. and C., as judges of election, to be held in the *first* ward of said city, which election is appointed to be held at ———, in said ward.

Given under my hand this —— day of ———, 18—.

A. B., Mayor.

The judges in making their returns of the election in the foregoing case should annex the writing of their appointment, so that it may appear by what authority the election is held. This proceeding being special, and authorized only where the facts exist recited by the statute, it should be made to appear in the proceedings affirmatively that the facts do exist, as set forth in the foregoing forms of election notice and appointment of judges. The election should be conducted and returns made and canvassed as in case of a regular election.

Form of notice to persons elected or appointed to office.

[See *ante*, p. 35, § 59.]

City of ———.

To A. B.

You are hereby notified that at the election held in said city of ———, on the —— day of ———, 18—, you was elected to the office of ———.

Dated this —— day of———, 18—. C. D., City Clerk.

The foregoing form can be varied to suit the occasion of appointment to office.

Form of clerk's certificate to prove ordinance.

[See *ante*, p. 65, § 65; p. 74, § 82.]

State of Illinois, } ss.
City [*or* Village] of ———. }

I, A. B., clerk of said city [*or* village] of ———, do hereby certify that the foregoing [*or* annexed] is a true and correct copy of the original ordinance, entitled "An ordinance," etc., now remaining on file in my office, as clerk aforesaid, and that the same is a true and correct copy of the record of said ordinance, as the same appears recorded by the clerk of said city [*or* village], in a book kept for that purpose.

{ L. S. } In witness whereof I have hereunto set my hand and affixed the corporate seal of said city [*or* village] of ———, this —— day of ———, 18—. A. B., City Clerk.

Form of official bond of city officers.

[See *ante*, p. 72, § 74.]

Know all men by these presents, that we, A. B. as principal, and C. D. as security, are held and firmly bound unto the city of ——— [*or* village of ———] in the sum of ——— dollars, which well and truly to be paid, we bind ourselves, our heirs, executors and administrators, and each of them, firmly by these presents. Sealed with our seals, and dated this —— day ———, 18—.

The condition of the above obligation is such that whereas the above bounden, A. B., has been elected to the office of [*state the office*], in and for said city of ———.

Now, therefore, if the said A. B. should faithfully perform the duties of said office, and shall pay over all moneys received by him as such officer, according to law and the ordinances of such city [*or* village], then this obligation to be void; otherwise to remain in full force and effect.

A. B. [L. S.]
C. D. [L. S.]

Official bonds are required to be approved by the city council or board of trustees. Such approval should be entered upon the journal of their proceedings.

Form of resolution fixing the amount of official bond.

Resolved, That the penal sum of the official bonds of the following city [*or* village] officers be and the same is hereby fixed at the following amounts:

That of mayor shall be ——— dollars.
That of city treasurer shall ——— dollars.
[*And so on, fixing the amount of each, as may be determined.*]

The action of the council in fixing the amount of official bonds may be in the form of an ordinance, if desired. The law provides that it may be by either resolution or ordinance. See *ante* p. 72, § 74.

Form of commission of city or village officers.

[See *ante* p. 72, § 76.]

State of Illinois, } ss.
City of ———. }

To all unto whom these presents shall come, greeting:

Know ye that [*name of officer*] having been, on the —— day of ———, 18—, duly elected [*or* appointed] as [*state the title of the office*] in and for said city of ———, and having taken the oath of office and given bonds as required, he is hereby commissioned to act and exercise the authority of said office until the —— day of ———, 18—, and until his successor shall be elected [*or* appointed] and qualified.

{ L. S. } In testimony whereof this warrant is signed by the clerk and mayor of said city, and the corporate seal thereof is hereunto affixed this —— day of ———, 18—.

A. B., Mayor.
C. D., City Clerk.

In case of a village, insert the word "village," in the foregoing form in place of "city," and "president of the board of trustees," instead of "mayor."

Form of certificate of election, or appointment of clerk, by mayor or president of trustees.

[See *ante* p. 72, § 76.]

State of Illinois, } ss.
City of ———. }

I, A. B., mayor of said city of ———, do hereby certify that C. D. was, on the —— day of ———, 18—, duly elected [*or* appointed] to the office of city clerk of said city, and having taken the oath of office, and given bond as required, he is entitled to act and exercise the authority of said office until the —— day of ———, 18—, and until his successor shall be elected and qualified.

{ L. S. } In witness whereof, I have hereunto set my hand, and affixed the corporate seal of said city of———, this —— day of———, 18—.

A. B., Mayor.

Form of notice by successor in office, to deliver books, etc.

[See *ante* p. 72, § 76.]

State of Illinois, } ss.
City of ———. }

To C. D., formerly [*title of office*] of said city of———.

You are hereby notified that I, A. B., having been elected [*or* appointed] to the office of [*title of office*], as your successor, and having duly qualified as such, do request that you deliver to me all property, books and effects of every description in your possession belonging to said city of ———, [*or* village], or appertaining to said office of ———.

Dated this —— day of ———, 18—. A. B.

Form of treasurer's report to city council or board of trustees.

[See *ante* p. 80, § 97.]

The city or village treasurer is required to report to the city council or board of trustees, a full and detailed account of all receipts and expenditures of the corporation, as shown by his books. No particular form can be given as a guide in making up such report, as each case will of necessity be different from another. The report should be addressed "to the city council," *or* "board of trustees," as the case may be, and show in detail, in the simplest form, the amount of money received, followed by the amount paid out in detail, showing the balance on hand. The report is required to show the account from the beginning to the close of the *fiscal* year; that is, the current or municipal year. This, by law, commences at the date of the annual election, or as may be fixed by ordinance. See *ante* p. 77, § 88.

Form of warrant on city or village treasurer for payment of money.

[See *ante* p. 80, § 98.]

$———. No. ———.

State of Illinois, } ss.
City of ———. } ————————, 18—.

To the treasurer of said city of ———.

Pay to A. B., or order, the sum of ——— dollars, out of the fund for [*state the fund or appropriation*], to which this warrant is chargable.

C. D., Mayor.

Countersigned: E. F., City Clerk.

In all disbursements for city or village expenses, or on account of appropriations, a voucher should be taken by the clerk, or other officer having the matter in charge, from the person to whom the payment is made. This may be in the form of a bill followed by a receipt. It may be in the following form, showing an itemized account:

It is generally required that some officer designated shall approve or certify to the correctness of accounts before payment. In the following form it is designed that the items of account shall be set forth as in any other case of rendering an account.

Form of voucher for disbursements by city or village.

State of Illinois, } ss.
City of ——, }

No. ——.

City of ——————.

187—. To ——————————————, Dr.

		To	$	Cts.

Received ——, 18—, from C. D., [*title of office,*] treasury warrant, No. ——, for —— dollars, in full payment of the above account.

I certify the above to be correct. A. B.

Form of certificate to county clerk of amounts to be raised by taxation.

[See *ante* p. 85, § 111, p. 103, § 158.]

State of Illinois, }
—— County, } ss.
City of ——. }

I, A. B., city clerk of said city of ——, do hereby certify that, at a meeting of the city council of said city, held on the —— day of ——, 18—, an ordinance was passed, entitled, "an ordinance," etc., which has been duly approved, and the same is now in force, requiring the following amounts to be raised by taxation in said city, for the current fiscal year, for the following purposes to wit: For interest on the city debt, and sinking-fund, —— thousand dollars; for engineer department, —— thousand dollars; [*and so on according to the facts*].

The aggregate amount of which is —— thousand dollars.

A copy of which ordinance aforesaid is hereunto annexed, which I certify to be a true copy of the original thereof now remaining in the office of the city clerk of said city.

{ L. S. } In witness whereof, I have hereunto set my hand and affixed the seal of said city, this —— day of ——, 18—.

A. B., City Clerk.

Special Assessments.—The following forms, given in cases of special assessment, are taken from those in use in the city of Chicago, where they have been the subject of judicial determination, wherein they have been sustained; from which they are considered reliable.

Special assessments for local improvement are made in pursuance of some ordinance, providing for such improvement and authorizing such special assessment therefor. The proceedings will be regulated to some extent by the terms of the ordinance. See *ante* p. 95, § 123.

Form of petition to county court, for special assessment.

[See *ante* p. 96, § 137.]

State of Illinois. }
Cook County. } ss.

To the honorable the county court of *Cook* county, Illinois:

Your petitioner, the city of *Chicago*, respectfully shows that heretofore, to-wit: on the —— day of ———, A. D. 18—, the city council of said city did pass an ordinance providing that [*recite the ordinance for the proposed improvement*], a certified copy of which ordinance, and of the approval thereof by the mayor of said city, is hereunto annexed and made part hereof.

That the commissioners appointed by said council to make an estimate of the cost of the improvement contemplated by said ordinance heretofore, to-wit: on the —— day of ———, A. D. 18—, made a report to said city council, (which was afterwards approved by said council,) estimating such cost at $——, a true copy of which report is annexed hereto, and made a part hereof.

Your petitioner prays that the cost of said improvement may be assessed in the manner prescribed by law.

A. B., Counsel to the Corporation.

The foregoing petition may be used in condemnation cases, so called, under Art. IX, *ante* p. 89, by slight changes to suit the occasion.

Form of assessment roll of special assessment by commisioners.

[See *ante* p. 97, § 140.]

Assessment roll, made by the commissioners appointed by the county court of *Cook* county, to assess the cost of [*here recite the contemplated improvement for which the assessment is made*]. Showing a description of the real estate deemed by said commissioners specially benefited by said contemplated improvement, and also showing a description of each lot, block, tract or parcel of land, and the amount assessed by said commissioners as special benefits thereto, the names of the respective owners thereof so far as known, and the amount found by said commissioners as public benefit and assessed to said city of *Chicago*.

	NAME OF OWNER.	PART OR LOT OF LAND.	Sub Lot.	Lot.	Block.	ASSESSMENT. Dollars.	Cts.

A. B. }
C. D. } Commissioners appointed by the county court of *Cook* county, Illinois, to make said assessment.
E. F. }

The foregoing blank, for name of owner, description of property, etc., will be carried forward on several sheets as the number of names and description of property may demand. The commissioners should properly sign their names at the end of the list.

Form of commissioner's certificate to assessment roll of special assessment.

[See *ante* p. 97, § 140.]

Chicago, ———, 18—.

The undersigned, commissioners, appointed by the county court of *Cook* county, to assess the cost of [*state the contemplated improvement*], do hereby certify that they have completed the foregoing assessment roll, showing a description of the real estate by them deemed benefited by said contemplated improvement; also showing description of each lot, block, tract or parcel of land, and the amount assessed by them as special benefits thereto, the names of the respective owners thereof so far as known, and the amount found by said commissioners as public benefit and assessed to said city of *Chicago*. That, before proceeding to make said assessment, they were duly qualified before entering upon their duties, as appears by the oath hereunto attached; that they examined the locality where the said improvement is proposed to be made, and the lots, blocks, tracts and parcels of land which will be specially benefited thereby, and did estimate what proportion of the total costs of said improvement will be of benefit to the public, and what proportion thereof will be of benefit to the property to be benefited, and did apportion the same between the city of *Chicago* and such property so that each shall bear its relative equitable proportion.

The amount so estimated and apportioned to said city being the sum of $———, and the amount so estimated and apportioned to property to be benefited, being the sum of $———. That, having found said amounts, they did apportion and assess the amount so found to be of benefit to the property, upon the several lots, blocks, tracts and parcels of land, in the proportion in which they will be severally benefitted by said improvement; and that no lot, block, tract or parcel of land has been assessed a greater amount than it will be actually benefited by said improvement.

A. B.
C. D.
E. F. } Commissioners appointed by the county court of *Cook* county, Illinois, to make said assessment.

Form of commissioner's affidavit of sending notice by mail.

[See *ante* p. 99, § 142.]

State of Illinois, }
Cook County. } ss.

This affiant, A. B., being duly sworn, upon oath says, that affiant and C. D. and E. F. were hertofore appointed by the county court of Cook county, commissioners to assess the cost of [*state the contemplated improvement*], and that said commissioners did cause to be sent by mail, to the owners whose premises have been assessed by said commissioners, and whose names and place of residence were known to them or either of them, the notice required by law to be sent by mail to the owners of premises assessed. A substantial copy of said notice being as follows: "Mr. (here the name was inserted) your (here a description of the premises was inserted) is assessed $ (here the amount of assessment on the pr mis s was inserted) for public improvement. The assessment roll will be returned to the ——— term of the county court of *Cook* county, Illinois.

(Date was here given.

A. B., Commissioner.

{ L. S. } Sworn and subscribed to before me this —— day of ———, A. D. 18—.

G. H., Notary Public.

Form of affidavit of posting special assessment notices.

[See *ante* p. 99, § 142.]

State of Illinois, } ss.
Cook County. }

This affiant, L. M., being duly sworn, upon oath says, that on the —— day of ———, A. D. 18—, he posted notices, of which the following is a copy, to-wit:

SPECIAL ASSESSMENT NOTICE.

[*Here give copy of notice*] as follows, to-wit: by securely affixing the same, one to the —— premises, No. —— street; one to the —— premises, No —— street; the said two places being in the neighborhood of said improvement; one at the west entrance of the city hall, at the corner of *Adams* and *LaSalle* streets, and one at the east entrance of the criminal court and county jail building, in said city, all of such places being public places in said city of *Chicago*, Illinois.

L. M.

{ L. S. } Sworn to and subscribed before me this —— day of ———, A. D. 18—.

G. H. Notary Public.

Form of certificate of publication,

[See *ante*, p. 99, § 142.]

ATTACH A COPY OF ASSESSMENT NOTICE HERE.

State of Illinois, } ss.
Cook County. }

This certifies, that a notice, of which the annexed notice is a true copy, has been published five times in the *Telegraph*, a daily newspaper, printed and published in the city of *Chicago*, in said county, and that the date of the first paper containing the said published notice was the —— day of ———, A. D. 18—, and that the date of the last paper containing the same was the —— day of ———, A. D. 18—.

It is further certified, that the said *Telegraph* was, at the time of the said publication of said notice, and is now, the corporation newspaper of the said city of *Chicago*, and that O. P. is the publisher of said newspaper.

In witness whereof, said publisher has hereunto set his hand this —— day of ———, A. D. 18—.

O. P., Publisher.

In case the newspaper publishing the notice as aforesaid is published by a corporation, the form of certificate may conclude as follows:

"It is further certified that the said *Telegraph* was, at the time of the said publication of said notice, and is now, the corporation newspaper of the said city of *Chicago*, and that the *Telegraph* company, a corporation duly existing, is the publisher of said newspaper.

{ L. S. } In witness whereof said *Telegraph* company have caused this certificate to be signed by its president and secretary and its corporate seal to be affixed this —— day of ———, 18—.

A. B., President.
C. D., Secretary.

As a general rule, all the papers, when completed in a given case of special assessment, should be attached together.

Organization of Villages.—The law provides that towns incorporated by special charter or general law, existing prior to the present incorporation act, may change the same and organize as villages under the present incorporation act. See *ante* p. 111, § 178. The law also provides for the incorporation of contiguous territory, not before incorporated. under a village organization, where the population thereof is at least three hundred inhabitants. See *ante* p. 112, § 182. The following forms are given as applicable in the foregoing cases. The forms heretofore given applicable to cities, are also designed to be used in some instances in cases of villages, by slight changes to suit the occasion, as has been before suggested.

Form of petition for change from town, to become incorporated under general law as a village.

[See *ante*, p. 111, § 178.]

To the president and trustees of the town of ———, Illinois:

The undersigned thirty voters of, and residing in said town of ———, do repectfully petition you to submit the question whether such town will organize as a village under the act of the general assembly of this state, to provide for the incorporation of cities and villages, to the decision of the legal voters thereof. And your petitioners will ever pray.

Form of order of president and trustees, submitting question for town to be organized under general law as a village.

State of Illinois, } ss.
Town of ———. }

Whereas, the petition of A., B. and C., and [*state the number of others*], legal voters of the town of ———, to the president and trustees of said town is this day presented, praying that the question whether said town will become organized as a village under the act of the general assembly of this state, to provide for the incorporation of cities and villages, be submitted to the decision of the legal voters thereof. It is therefore ordered that the said question be submitted accordingly, and that for that purpose an election be held in said town on the —— day of ———, 18—, at ———, and that A., B. and C. are appointed as judges to hold said election, and that due notice thereof be given.

The foregoing order should be entered on the journal of proceedings of the trustees.

Form of notice of election by president and trustees of town, to vote on question of organization under general law.

[See *ante* p. 112, § 178.]

ELECTION NOTICE FOR INCORPORATION UNDER GENERAL LAW.

Public notice is hereby given that, in accordance with a petition for that purpose, by the requisite number of legal voters, an election will be held

in the town of ———, on the —— day of ———, 18—, at which a vote of the legal voters of said town will be taken on the question whether said town will become organized as a village under the act of the general assembly, entitled "An act to provide for the incorporation of cities and villages."

Dated this —— day of ———, 18—.

[*To be signed by the president and trustees.*]

The form of canvass of votes and statement of the result, by the president and trustees, will be substantially the same as before given in case of election to become organized as a city, by changes to suit the occassion. See *ante* p. 154.

Form of petition to county judge, for organization of village under general law, where not before incorporated.

[See *ante*, p. 112, § 182.]

To the county judge of ——— county, Illinois:

The undersigned petitioners respectfully represent that they are legal voters, residing within the following contiguous territory, situated in the said county of ———, in area not exceeding two square miles, and which has resident thereon a population of ——— hundred inhabitants, and which is not included within the limits of any incorporated town, village or city, to-wit: [*Here describe the territory by government subdivision, or other definite description.*] That it is desired that said territory may become incorporated as a village under the act of the general assembly of Illinois, to provide for the incorporation of cities and villages, and that the name of such proposed village is [*state the name.*] Said petitioners therefore pray that the question may be submitted to the legal voters of such proposed village whether they will organize as a village under the act of the general assembly aforesaid. And said petitioners will ever pray.

In subsequent proceedings, the forms heretofore given in case of organization of cities in like cases, may be used by changes to suit the occasion. See *ante* p. 155.

Form of petition for annexing contiguous territory.

[See *ante*, p. 117, § 195.]

To the city council of the city of ———, Illinois:

The undersigned petitioners, being three-fourths of the legal voters, and the owners of three-fourths (in value) of the property in the territory hereinafter described, contiguous to said city of ———, and not embraced within the limits thereof, described as follows, to-wit: [*Here describe the territory sought to be annexed.*] Do respectfully petition that said contiguous territory, described as aforesaid, be annexed to said city, and form a part thereof. And said petitioners will ever pray.

The law requires that the annexation of contiguous territory, in the foregoing case, shall be by ordinance, filed in the office of the recorder of deeds of the county, certified by the mayor or president of the board of trustees. See *ante* p. 117, § 195. The form of certificate in such cases may be substantially the same as that given heretofore for authentication of ordi-

nance by city clerk. See *ante* p. 165. The law provides that in case no petition for annexation is filed as aforesaid, that action to that end may be taken by the city council or board of trustees, by petition of the mayor or president. See *ante* p. 118, § 197.

Form of resolution by city council or board of trustees, authorizing mayor or president to petition for annexing territory.

[See *ante* p. 118, § 197.]

Resolved, By the city council, two-thirds of all the aldermen concurring herein, that the mayor of the city of ——— be, and he is hereby, authorized to proceed and petition to the circuit court of ——— county, to have the following contiguous territory annexed to said city, to-wit: [*describe the territory*] The same not having been petitioned for by any of the legal voters or owners of property in said contiguous territory, and which territory contains a resident population of one hundred and fifty inhabitants to each section or fractional part of a section thereof.

The law provides that action by the city council or board of trustees in the foregoing case, should be by virtue of either an ordinance or resolution, by a two-thirds vote of all the aldermen or trustees elect. The yeas and nays should be taken on the passage of such ordinance or adoption of the resolution, that it may appear that the requisite number of aldermen or trustees have voted therefor. The foregoing form of resolution may be changed to suit the occasion of an ordinance.

Form of petition by mayor or president of board of trustees, for annexation of contiguous territory.

[See *ante* p. 118, § 197.

State of Illinois, } ss.
——— County. }

To the honorable the judges of the circuit court of said county:

The undersigned, the mayor of the city of ———, in said county, respectfully represents that at a meeting of the city council of said city on the —— day of ———, 18—, a resolution was adopted, of which the following is a copy, to-wit:

[*Set forth a copy of the resolution, which should describe the territory in question.*]

Said petition further represents, that said city desires to annex thereto the territory described in said resolution, and the same has not been petitioned for by any of the legal voters or owners of property in said contiguous territory. That said territory contains an actual resident population of one hundred and fifty inhabitants to each section or fractional part thereof. That the following is an accurate map of the territory described in said resolution which it is desired to annex:

[*Here give a map of the territory, showing all such subdivisions that shall have been made therein.*]

Said petitioner therefore prays that said contiguous territory, hereinbefore described, may be annexed to said city, as provided by law in such cases. And said petitioner will ever pray.

A. B., Mayor of the City of ———.

The word *section*, in the preceding forms, is understood to have reference to a section of land according to government survey, being one mile square.

Form of notice by mayor, or president of trustees, of filing petition for annexing territory.

[See *ante*, p. 118, § 198.]

Public notice is hereby given that a petition will be filed [*or* was filed] with the clerk of the circuit court of ——— county, State of Illinois, on the —— day of ——— 18—, by the mayor of the city of ———, praying for annexation to said city of the territory described as follows, to-wit: [*Give boundaries, or a general description of the territory.*] And that a hearing of said petition will be had at the ——— term of said circuit court.

Dated this —— day of ———, 18—.

A. B., Mayor.

Form of petition for annexation of territory, by majority of legal voters and owners of land.

[See *ante* p. 119, § 201.]

State of Illinois, } ss.
——— County. }

To the honorable the judges of the circuit court of said county:

The undersigned petitioners, being a majority in number of the legal voters residing within the following described territory, contiguous to the incorporated city of ——— [*or* the owner *or* owners of the following described territory] to-wit: [*describe the territory sought to be annexed;*] do respectfully petition that said contiguous territory, described as aforesaid, be annexed to said city and form a part thereof. And said petitioners will ever pray.

Form of petition to disconnect territory from city, town or village.

[See *ante* p. 119, § 202.]

State of Illinois, } ss.
——— County. }

To the honorable the judges of the circuit court of said county:

The undersigned petitioners, being a majority of the legal voters of territory within the city of ———, in said county, described as follows, to-wit: [*here describe the territory sought to be disconnected.*] Said lands not being laid out into city or town lots or blocks, do respectfully petition that said territory, described as aforesaid, be disconnected from said city, according to the statute in such case made and provided. And said petitioners will ever pray.

Form of petition for change of name of city, town or village.

[See *ante* p. 120, § 206.]

To the city council of the city of ———, Illinois:

The undersigned petitioners, qualified electors of said city of ———, and equal in number to one-half of those who voted for the officers therein at the last election, do respectfully petition that the name of said city be changed to that of [*state the name desired to be changed to*], according to the statute in such cases made and provided. And said petitioners will ever pray.

Form of notice of presentation of petition for change of name.

[See *ante* p. 121, § 209.]

Public notice is hereby given that on the —— day of ———, 18—, a petition of the requisite number of qualified electors of the city of ——— was presented to the city council thereof, praying for a change of the name of said city to [*state the name desired in the petition*], and that action will be had by the city council on said petition on the —— day of ———, 18—, at which time remonstrances, if any, will be heard.

By order of the city council, the —— day of ———, 18—.

C. D., City Clerk.

The law provides that the foregoing notice shall be given by order of the corporate authorities of the city, town or village (see *ante* p. 122, § 209), being the city council or board of trustees. It is proper that such order should direct the clerk to give the notice.

Form of petition for change of name of unincorporated town or village.

[See *ante*, p. 122, § 214.]

State of Illinois, } ss.
——— County. }

To the honorable, the judges of the circuit court of said county:

The undersigned, petitioners, being a majority of the legal voters residing within the limits of the unincorporated town [*or* village] of ———, in said county, do repectfully petition that the name of said town [*or* village] be changed to [*state the named desired*], according to the statute in such case made and provided.

And said petitioners will ever pray.

Notice of the change of name proposed by the foregoing petition is required to be filed in the office of the secretary of state. See *ante* p. 123, § 214. This may be by a simple communication by any one or more of the petitioners, stating the facts, that action may be had in conformity to § 207, *ante* p. 121.

Form of itemized statement by owner, who constructs sidewalk.

[See *ante* p. 142, § 264.]

State of Illinois, } ss.
City of ———. }

An itemized statement by A. B., owner of the following described lot, in said city of ———, to-wit: [*describe the lot*]; of the cost of a sidewalk in front of said lot, on [*name of street*] street, which said owner has caused to be constructed and completed the —— day of ———, 18—, viz: [*here set forth the items, and the cost of each, comprising the labor, lumber, nails, or whatever the sidewalk may be composed of.*]

Dated this —— day of ———, 18—. A. B.

Form of affidavit to the foregoing itemized statement.

State of Illinois, } ss.
——— County. }

A. B., being duly sworn, doth depose and say, that he has lately caused a sidewalk to be constructed in front of the lot as set forth in the annexed [*or* foregoing] itemized statement of the cost thereof made by him, as

therein set forth, of which lot he is the owner, and that said itemized statement is in all things true and correct as therein stated. A. B.

Subscribed and sworn to before me, this —— day of ———, 18—.

C. D., Justice of the Peace.

Form of certificate of street commissioner or other officer as to sufficiency of sidewalk constructed by owner of lot.

State of Illinois, } ss.
City of ———. }

I, L. M., street commissioner, [*or other officer as the case may be*,] in and for said city, being the officer directed by the ordinance on that subject to superintend the construction of all sidewalks in said city do hereby certify that the sidewalk mentioned in the annexed [*or* foregoing] itemized statement made and verified by A. B., has been constructed and fully completed by the said A. B., in accordance with an ordinance entitled "An ordinance," etc., [*describing the ordinance*].

Given under my hand this —— day of ———, 18—.

L. M., Street Com.

The foregoing certificate is required to be made by the officer or board directed by the ordinance on the subject, to superintend the construction thereof. See *ante* p. 142, § 264.

Licenses.—The law provides that the corporate authorities of cities and villages shall have power to grant license to sell liquor, and for various other purposes. See *ante* p. 51, 52. The law further provides, that in granting license to sell liquor, the corporate authorities shall comply with whatever general law of the state may be in force relative to the granting of licenses. See *ante* p. 53.

The general law of the state on the subject aforesaid, styles a place where liquors are sold, a "dram shop." Rev. Stat., 438, Ch. 43.

Form of license to keep a dram shop and sell liquor.

[See *ante* p. 52, clause 46]

By authority of the city of ———, [*or* village of ———,] State of Illinois.

Permission is hereby given to A. B., to keep a dram shop at [*state the place where the dram shop is to be kept, by street and number, or otherwise*,] in the city of ———, [*or* village of ———,] State of Illinois, and to sell, vend and retail spirituous, vinous, malt, fermented and mixed liquors, by a less quantity than one gallon, from the date hereof until the —— day of ———, 18—; such bonds having been filed and approved as are required by the laws of the state of Illinois, and the ordinances of the city of ———, [*or* village of ———,] in such case made and provided. The said A. B. to be subject to all laws of the State of Illinois, and ordinances of the city of ———, [*or* village of ———,] which now are or hereafter may be in force, touching the premises.

{ L. S. } Given under the hand of the mayor of said city, [*or* president of the board of trustees of said village,] and the corporate seal thereof, this —— day of ———, A. D. 18—.

E. F., City Clerk. C. D., Mayor.

Form of bond for dram shop license.

Know all men by these presents, that we, A. B., C. D. and E. F., of the city of ——— [*or* village of ———], and State of Illinois, are held and firm-

ly bound unto the people of the state of Illinois, in the penal sum of three thousand dollars, lawful money of the United States, for the payment of which well and truly to be made and performed, we, and each of us, do hereby bind ourselves, our heirs, executors, administrators and assigns, and legal representatives, jointly and severally, by these presents.

Witness our hands and seals, at ———, this —— day of ———, A. D. 18—.

The condition of this obligation is such that, whereas, the above bounden, A. B., has obtained from the proper city authorities of the city of ——— [*or* board of trustees of the village of ———] permission to keep a dram shop at [*place where*] in said city [*or* village], from the —— day of———, A. D. 18—, to the —— day of ———, 18—.

Now, if the said A. B. shall well and truly pay to all persons all damages which they may sustain, either in person or property, or means of support, by reason of said A. B. selling or giving away intoxicating liquors, and shall well and truly observe all the laws of the State of Illinois, and ordinances of said city [*or* village] concerning the sale of intoxicating liquors, then and in that case, this obligation to be void, otherwise to remain in full force, virtue and effect. ———— [L. S.]
———— [L. S.]
———— [L. S.]

Form of permit to druggist to sell liquor

[See *ante* p. 53.]

By authority of the city of ——— [*or* village of ———], State of Illinois.

Permission is hereby given to A. B., druggist, at [*state place of doing business*], in the city of ——— [*or* village of ———], county of ———, and State of Illinois, to sell liquors for medicinal, mechanical, sacramental and chemical purposes, from the —— day of ———, A. D. 18—, to the —— day of ———, A. D. 18—, subject to forfeiture and under such restrictions and regulations which now are or may be hereafter provided by ordinance.

{ L. S. } Given under the hand of the mayor of said city [*or* president of the board of trustees of said village] and the seal thereof, this —— day of ———, A. D. 18—. A. B., Mayor.

C. D., City Clerk.

As before mentioned, the law also empowers the corporate authorities of cities and villages to license various occupations, places of amusement and the like. See *ante* p. 51, 52. The following is a general form of license that may be used in all such cases, by being filled up to suit the occasion.

General form of license for various occupations, etc.

[See *ante* p. 51.]

By authority of the city of ———, [*or* village of———], State of Illinois.

Permission is hereby given A. B., to [*here state the occupation, business, game, or whatever the license may relate to,*] from the date hereof until the —— day of ———, 18—, in said city, [*or* village,] subject to the ordinances of said city, [*or* village,] in such cases made and provided, and to revocation by the mayor [*or* president of the board of trustees] at any time, at his discretion, or as may be prescribed by ordinance.

{ L. S. } Witness the hand of the mayor of said city, [*or* president of the board of trustees of said village,] and the corporate seal thereof, this —— day of ———, 18—. L. M., Mayor.

Attest: O. P., City Clerk.

Town Plats.—The land comprised within cities and villages is necessarily divided into small parcels, in dimensions as circumstances may require. The convenience of the inhabitants requires also the opening of streets and alleys to accommodate the small subdivisions of the land. This has given rise to our present statutes, providing for laying out and recording town plats. See *ante* p. 153. The law also provides, as will be seen, for vacating such plats. This subject therefore becomes a part of the general subject of cities and villages, and is properly embraced within this work. Such forms as are properly required are here given, in connection with this subject.

Form of certificate of surveyor to plat.

[See *ante* p. 154.]

State of Illinois, } ss.
——— County. }

I, A. B., county surveyor of said county of ———, [*or* competent surveyor] do hereby certify that the foresoing [*or* within, *or* annexed] plat is a correct plat of the survey of the town of ——— [*or* addition to the town of], in said county, as the same is represented thereon, as the same was surveyed by me at the instance of the owner, C. D., the survey of which was completed the —— day of ———, 18—.

Given under my hand this —— day of ———, 18—.

A. B.. County Surveyor.

Form of acknowledgment of plat by owner of land.

[See *ante* p. 154.]

State of Illinois, } ss.
——— County. }

I, A. B., *a justice of the peace* in and for said county, do hereby certify that C. D., the owner of the lands comprised within the foregoing [*or* within *or* annexed] plat, personally known to me to be the same person who caused the survey of said plat, appeared before me this day in person, and acknowledged that he had caused said plat to be surveyed in manner as appears therein, as his free act and deed for the uses and purposes as therein shown and expressed.

Given under my hand and seal, this —— day of ———, A. D. 18—.

A. B., [L. S.]
Justice of the Peace.

The acknowledgment of a plat may be before any officer authorized to take acknowledgment of deeds, and made in like manner. See *ante* p. 153.

Form of instrument vacating a plat.

[See *ante* p. 155.]

Know all men by these presents, that I, A. B., having laid out a town plat known and described thereon as "a plat of the town of ———, [*or* an addition to the town of ———, [*or as the case may be*,] which plat is recorded in the recorder's office of the county of ———, State of Illinois, in book ——, at page ——, and being at this time the owner of the premises covered by said plat, and desiring to vacate the same, do hereby declare said plat vacated the same as if it had never existed.

In witness whereof I have hereunto set my hand and seal, this —— day of ———, A. D. 18—.

A. B. [L. S.]

Form of instrument vacating part of plat.

[See *ante* p. 156.]

Know all men by these presents, that I, A. B., having laid out a town plat known and described thereon as "a plat of the town of ———," [*or* an addition to the town of ———, *or as the case may be*]' which plat is recorded in the recorder's office of ——— county, State of Illinois, in book ——, at page ——, and being desirous of vacating a part of said plat hereinafter described, of which I am the owner, the vacation of which will not abridge or destroy any of the rights or privileges of other proprietors in such plat, do hereby declare the following part of said plat vacated, to-wit: [*here describe the blocks, public grounds, and streets in question*] the same as if said plat thereof had never existed.

Witness my hand and seal, this —— day of ———, 18—.

A. B. [L. S.]

II. FORMS OF ORDINANCES ON GENERAL SUBJECTS FOR CITIES AND VILLAGES.

The following precedents are given as suggestions to guide in framing ordinances of a general nature, for cities and villages. The subjects and provisions embraced comprise what may constitute a very complete code of ordinances necessary in the average cities and villages of the state; accompanied by notes and references to adjudicated cases, explanatory, or in support of the various provisions in the form set forth. This feature will be found of great service, in consulting these precedents with a view to framing ordinances therefrom.

The precedents here given are derived largely from ordinances adopted and long in use in various cities and villages in this state, where in many instances they have been the subject of judicial test.

Whilst the provisions, as set forth in these precedents, may not as a whole be adapted to the wants of any particular municipal corporation in the words as expressed, yet they may serve as suggestions in framing ordinances on the various subjects to which they relate, the same as would be the case in framing bills for acts of the legislature where reference is almost invariably had to the laws as enacted in other states on the same or similar subjects. They give us ideas on the subject, or starting points from which we are enabled to mature provisions in more perfect form than we would be able to do without the aid of some guide of this kind, furnished as such precedents generally are from a combination of experience.

The following precedents of ordinances, as before remarked, are rather in a codified form; that is, they embrace in general a variety of subjects in each, so far as they are of the same nature, and can properly be made the subject of one ordinance. In framing ordinances from these precedents, the entire provisions of a particular ordinance, as here given, may not be desired or may not be applicable to the wants of a particular locality. In such instances it will be found that portions, or certain sections thereof may be taken, and when grouped together will form such an ordinance as will suit the occasion desired.

In most instances it is apprehended that changes or modifications from the precedents given will have to be made, to a greater or less extent, as in other cases of forms of this kind, to suit the occasion of the particular locality where the ordinance is desired. And there may be instances where it will be deemed advisable to frame several ordinances out of one ordinance as set forth in these precedents.

Ordinances should have a title, or something of the kind, by which they may be known or referred to. In some cities ordinances are known simply by number: as "ordinance No. 1," etc. Where the ordinances have been codifi . they are usually known by chapters; as "Chapter I,"

etc. The most convenient mode of designation is by *number*, while the most satisfactory would probably be a title, in manner of acts of the state legislature. It would do no harm to add also after the title, a number by which the ordinance may likewise be designated, something in the manner of bills pending in the general assembly of the state.

The *style* of ordinances for cities (which those heedless of proper terms misname the *enacting clause*,) the law requires should be in the following words: "Be is ordained by the city council of ———;" see *ante* p. 65, § 63; and for villages, "Be it ordained by the president and board of trustees of the village of ———." See *ante* p. 114, § 187. These words must be affixed at the beginning of every ordinance for a city or village as the case may be; and precisely in the words as prescribed, otherwise the ordinance will be invalid. The office of these words is, an indication or expression of the legislative will or intention, that the provisions following shall be the law; the same as the word, *Resolved*, preceding a resolution, is used to indicate that the words following are to be taken as the sense or opinion of the assembly.

In the precedents following, words and terms are used applying to *cities*, which, in case of *villages*, can be changed to suit the occasion, by inserting "village" in place of "city;" "President and board of trustees," in place of "city council," and the like.

Form of ordinance fixing meetings of the city council.

[See *ante* p. 29, § 37.]

ORDINANCE NO. —.

AN ORDINANCE regulating the meetings of the city council.

SECTION 1. *Be it ordained by the city council of* ———, That the regular stated meetings of the city council shall commence and be held on the *first Monday* in each month of ———, of each year, at —— o'clock —. m., at [*state the place where*].

SEC. 2. Notices of special meetings shall be given by the clerk of the council, and may be served by such person as he shall appoint for that purpose.

SEC. 3. The time of a special meeting shall be fixed in the call, but it shall not be necessary to specify the object of such meeting in the call or notice.

SEC. 4. Any member of the council who shall fail or neglect to be present at the time set for any meeting of the council, or of any adjourned meeting thereof, unless he shall have left with the clerk before the time set for such meeting, written notice of his intention to be absent, in cases when such absence is unavoidable—what shall constitute unavoidable absence to be determined in every case by the members present at such meeting—or who shall absent himself from any meeting before a regular and formal adjournment thereof, without leave of the board, may be fined by order of the council present, in any sum not exceeding five dollars for each offense; and unless such fine shall be remitted by vote of a majority of all the members elected, it shall be the duty of the proper officers to see that the same is charged against and deducted from the salary of each member.

SEC. 5. The mayor shall take the chair promptly at the time set for any meeting and call the council to order, and, if a majority of the aldermen are not present, those present, after directing and assessing the amount of fine or penalty to be recorded and deducted from the salary of absent members shall adjourn until the following day; if the day following falls upon a Sunday, then the adjournment shall be had until the Monday following. In case of absence of the mayor at the time set for any meeting, then some member of the council shall call the same to order and the council shall elect one of its own members chairman *pro tem.*, and like proceedings shall be had.

SEC. 6. This ordinance shall be in force from and after its passage and promulgation, and all ordinances in conflict thereto are hereby repealed.

SEC. 7. This ordinance shall be known as ordinance No. —.

Passed ———, 18—.
Approved ———, 18—.
Published ———, 18—.

A. B., Mayor.

{ L. S. } Attest:
C. D., City Clerk.

The foregoing form of ordinance provides as well concerning absentees as in regard to meetings of the council. These may be the subject of separate ordinances, if desired. Where a salary or compensation is allowed to aldermen, the mode of collecting any fine imposed may properly be by deducting the amount from such salary or compensation; otherwise the fine may be collected as fines in other cases, or as the council may provide. Whilst the law provides that the council may prescribe penalties for non-attendance of aldermen (see *ante* p. 29, § 36), it would not seem policy to resort to the exercise of this authority on ordinary occasions. It should be an extreme case of willful neglect of duty before such course should be resorted to. The following is a short form of separate ordinance concerning absentees from city council:

Short form of ordinance concerning absentees from city council.

[See *ante* p. 29, § 36.]

ORDINANCE NO. —.

AN ORDINANCE to compel the attendance of absentees, at meetings of city council, and prescribe penalties therefor.

SECTION 1. *Be it ordained by the city council of* ————, That it shall be the duty of each alderman to attend promptly at each regular and special meeting of the council, at the hour appointed for meeting, and in default thereof, or on failure to do so, he shall forfeit and pay a penalty of ———, for each omission to attend as aforesaid.

SEC. 2. This ordinance shall be known as ordinance No. —.

Passed ———, 18—.
Approved ———, 18—.
Published ———, 18—.

A. B., Mayor.

{ L. S. } Attest:
C. D., City Clerk.

Form of ordinance concerning suits and prosecutions.

ORDINANCE No. —.

AN ORDINANCE concerning suits and prosecutions.

SECTION 1. *Be it ordained by the city council of* ———, That all suits, actions or prosecutions for the recovery of any fine, forfeiture or penalty by the city of ——— against any person or corporation for the violation of any ordinance of said city, where said fine, forfeiture or penalty does not exceed two hundred dollars, may be instituted by any officer of said city, or other responsible person, before any magistrate residing and having an office in said city: *Provided*, That the word magistrate, when used in the ordinances of said city, and in all processes, complaints, judgments, executions, and other proceedings thereunder, shall be taken to mean either a police magistrate or justice of the peace, or both, according to the facts.(1)

SEC. 2. All such actions aforesaid shall be commenced against any corporation, and may be commenced against any person, by the issuance of a summons by any such magistrate in the ordinary form, (2) as near as may be, of the summons now issued by justices of the peace in civil actions; except that such summons shall state the number and section of the ordinance alleged to have been violated and the particular breach thereof substantially in the language of the ordinance, and may be as near as the nature of the case will admit of, in the following form:

State of Illinois, }
——— County, } ss.
City of ———. }

The people of the State of Illinois, to the city marshal of the city of ———, or any constable of said county, greeting:

You are hereby commanded to summons A. B. to appear before me at my office in said city of———, on the —— day of———, 18—, at——o'clock —. m., to answer a certain demand, not exceeding two hundred dollars, of said city, against him, of the nature of a penalty, for the violation of section ——, of ordinance No. ——, of said city, by ——— (state offense), and hereof make due return, as the law directs.

Given under my hand this —— day of ———, 18—.

[*Name of official and title of office.*]

The magistrate issuing such summons, as well as the warrant provided for in section 4 hereof, shall indorse on the back thereof, as the maximum demand of said city, against the party sued,(3) the amount of the highest penalty imposed for the violation of the ordinance therein referred to, and all subsequent proceedings shall be the same as if said warrant had been issued in the first place.

SEC. 3. That all such actions aforesaid, not so commenced by summons as aforesaid, where the offender is still at large or under arrest without warrant, shall be commenced by filing with any such magistrate a com-

(1) See *ante* p. 68, § 69.

(2) See *ante* p. 67, § 68

(3) See Rev. Stat., 640, § 18, HAINES' TREATISE, new ed., 265. See *ante* p. 66, note 1.

In a suit for violation of a city ordinance, the fact that liquor was owned by three, only two of whom are sued, constitutes no objection to a recovery. Such action is in the nature of a tort, in which one or more of the offending parties may be sued. *The Pres. and Trustees of the Town of Jacksonville* v. *Holland et al.*, 19 Ill. R.. 271.

plaint duly signed and sworn to by some officer of said city, or other responsible person, unless said complaint be expressly waived by the person charged. Said complaint shall specify the number of the ordinance, the section or sections thereof violated and the nature of the offense as near as may be in the language of such ordinance; and, also, that the complainant has reasonable grounds to believe that the party charged is guilty of having violated the same.(1)

Said complaint may be substantially in the following form:

State of Illinois, }
——— County, } ss.
City of ———. }

I, ———, complainant, do solemnly swear that I, ———, have reasonable grounds to believe that a certain person, known to me, by the name of [*name of person charged*], is —— guilty of having violated, within the territorial jurisdiction of said city, the provisions of section ——, of ordinance No. ——, of said city, by [*state particular breach*], between noon, the —— day of ———, 18—, and noon, the —— day of ———, 18—. Therefore, I, ———, pray that a warrant be issued for the arrest of said person.

———,
Complainant.

State of Illinois, }
——— County, } ss.
City of ———. }

I, ———, a ——— of said city, do hereby certify that the above complaint was duly subscribed and sworn to before me by the complainant, therein named, at the city aforesaid, this —— day of ———, 18—.

[*Name of official and title of office.*]

SEC. 4. Upon said complaint being filed as aforesaid, it shall be the duty of the magistrate with whom the same is filed, unless the party charged is already under arrest, to issue a warrant for the arrest forthwith of the person charged in said complaint;(2) which warrant shall briefly recite the allegations of said complaint, and may be substantially in the following form:

State of Illinois, }
——— County, } ss.
City of ———. }

The people of the State of Illinois, to the city marshal of the city of ———, or any constable of said county, greeting: (3)

Whereas, there has been filed with me, the undersigned magistrate, a complaint signed and sworn to by one A. B., wherein he alleges that he has reasonable grounds to believe that one C. D. is guilty of having vio- collecting the same, to the magistrate in charge of the docket upon which lated section —— of ordinance No. ——, of said city, by [*state particular breach.*]

Now, this is to command you to arrest and bring the body of said C. D. forthwith before me, unless special bail be entered on the back of this war-

(1) See *ante* p. 66, note 1; p. 67, § 68; p. 68, note 2.

(2) See *ante*, p. 67, § 68.

(3) See *ante* p. 70, § 73; p. 71, note 2. Unless authorized by statute, an officer can perform no official act outside of and beyond the territorial limits in which he is authorized and required to act. *Van Dusen* v. *The People*, 78 Ill, R., 645.

rant, signed by one or more responsible sureties for the full amount of the demand of said city endorsed hereon; and if such bail be entered, you will then command him, the said C. D., to appear before me at my office in said city, on the —— day of ———, 18—, at — o'clock — m., to answer a certain demand of said city against him of the nature of a penalty not exceeding two hundred dollars for the violation of the ordinance aforesaid, and hereof make due return as the law directs.

Given under my hand and seal, this —— day of ———, 18—.

[*Name of officer and title of office.*] [L. S.]

SEC. 5. Any person arrested by virtue of any such warrant, except for cause stated in section 8, hereof, shall have the right to release his body by giving special bail to the officer executing the same, which shall be endorsed on the back of the warrant in the following form as nearly as the case will admit, to-wit:

I, ——, acknowledge myself special bail for the within named——.
Witness my hand, this —— day of ———, A. D. 18—.

———

Which endorsement shall be signed by one or more sureties to be approved by the officer making the arrest, and all the liabilities and rights shall attach to said bail or sureties, and like proceedings shall substantially be taken to enfore the liability of such bail to pay the judgment and costs obtained against the person so bailed, in the event of his failure to appear before the magistrate on the day set for trial in said warrant, as are provided for in the case of special bail, in sections 24, 26, 27, 28 and 29, of chapter 79 of the Revised Statutes, 1874, of Illinois.(1)

SEC. 6. Any person with or without warrant arrested and brought before any such magistrate for the violation of any ordinance of said city, shall have the right, except for cause stated in section 8, hereof, to postpone trial, on cause for continuance shown according to the laws of the State of Illinois, and may release his or her body from arrest for a period not exceeding ten days, by entering into an obligation with one or more responsible sureties, to be approved by such magistrate, which obligation may be substantially in the following form:

State of Illinois, }
——— County, } ss.
City of ———. }

This is to witness, that if the undersigned, A. B., shall fail to appear before, remain with and abide the orders of C. D., a ——, at the office of said magistrate in said city, on —— day of ———, 18—, at — o'clock — M., or at any other reasonable time then appointed by said magistrate, with or without the consent of said A. B., not exceeding three days thereafter, and shall then and there fail to answer the violation of an ordinance of said city, on a complaint sworn to by some responsible person, and before the time first above named filed with such magistrate, then and in that case, we, the undersigned, acknowledge ourselves jointly and severally indebted to said city, in any sum not exceeding two hundred dollars adjudged to be due said city, on said complaint, for the payment of which we bind ourselves, our heirs, executors and administrators, under our hands and seals, this —— day of ———, 18—, at said city.

A. B. [L. S.]
C. D. [L. S.]
E. F. [L. S.]

(1) See HAINES' TREATISE, new ed., p. 272; title, "Special Bail."

And the legal effect of said obligation shall be, that if the party bailed shall not appear before such magistrate, at the time therein stated, and judgment shall be entered against such party and in favor of said city, then, (without mittimus issuing on said judgment, although the same may be issued, at any time according to law, the liability of such party bailed, his or her co-obligors, or sureties, to pay on such obligation, the amount of said judgment and costs, to said city, shall attach to such obligation, and suit may immediately be instituted thereon.

SEC. 7. Any person arrested for any offense under any ordinance of said city, may be detained in custody in the city prison, or other safe place during Sunday, (1) a national holiday and over night, and for a reasonable time on all other occasions, until such offender can be brough for trial before some proper magistrate: *Provided*, That any such offender so arrested without warrant, except for cause stated in section 8, hereof, may during any time so detained, release his or her body from custody by entering into with said city a like obligation provided for in section 6, hereof, to appear within three days thereafter before some certain magistrate of said city, at a day and hour to be fixed, and with surety to be approved by the officers making such arrest.

SEC. 8. No person so arrested for the violation of any ordinance of said city shall be released at any time from the custody of said city or other lawful authority, so long as the conduct, language and personal appearance of such offender are calculated to lead a prudent and reasonable person to suspect that such offender is an idiot or lunatic, or so far under the sway of passion, or influence of intoxicating liquors that the public peace or security of any person would be jeopardized by the release of such offender. Any officers violating the provisions of this section shall, upon conviction, be fined in a sum not exceeding twenty-five dollars.

SEC. 9. Any magistrate aforesaid is authorized and directed to proceed without unnecessary delay, with the examination or trial of any offender of any ordinance of said city, whether brought before such magistrate by summons or otherwise, and immediately upon conviction of such offender, enter judgment in favor of said city of ——— for the amount of the fine or penalty and costs of prosecution, and order that such offender, in default of immediate payment of such judgment and costs, shall be committed to the city prison or other safe place of custody until such fine is paid or offender is otherwise discharged under the ordinances of said city.(2)

Such judgment may be substantially in the following form:(3)

City of ———, plaintiff,
vs.
——— A. B. ———, defendant,
} Suit on section ———, of ordinance No. —.

[*After reciting the proceedings, conclude as follows:*]

After evidence heard (and upon a verdict found by a jury) in the above entitled cause, it is adjudged by the court that the above defendant pay to the city of ———, ——— dollars penalty and ——— dollars costs of suit, and in default of immediate payment, that said defendant be committed to the city prison or other safe place of custody until the penalty and costs aforesaid are paid, or said defendant otherwise discharged, according to the ordinances of said city.

(1) See *ante* p. 75, § 83.

A Recognizance entered into on Sunday is valid. *Johnston* v. *The People*, 31 Ill. R., 469.

(2) See *ante*, p. 67, § 68; p. 66, note 1.

(3) For form of recognizance see Bollig, *ex parte*, 31 Ill. R., 91.

Provided, That where such offender is a corporation, an ordinary judgment shall be rendered, and execution issued and subsequent proceedings of levy and sale be had as are provided for in the statutes of this state in civil cases before justices of the peace.(1)

SEC. 10. The magistrate or court rendering any such judgment, substantially of the form aforesaid, shall demand of the defendant the immediate payment of the same, in lawful money, and in default of such payment, shall immediately issue an order for the arrest and commitment in the city prison of said city, of said defendant, pursuant to the terms of such judgment, which order or mittimus shall be substantially of the following form:(2)

State of Illinois, }
——— County, } ss.
City of ———. }

The people of the State of Illinois, to the city marshal, and warden of the city prison of the city of ———, or any constable of said county, greeting:

Whereas, on the —— day of ———, 18—, said city of ——— recovered before me a judgment for the sum of —— dollars penalty, and —— dollars ——cents costs, against one C. D., for the violation of section ——, of ordinance No. ——, of said city by (*here state offense*).

Now, this is to command you in the name and authority of said people, to demand of said C. D. the immediate payment, in lawful money, of said judgment and costs, and upon his failure or refusal to pay the same on such demand, that you arrest and take the body of said C. D., and him deliver, with this writ, to the warden of the city prison aforesaid,(3) and we command you, the said warden, to receive the body of him, the said C. D., and him safely keep in the city prison, or other safe place of custody provided by the authority of said city, twenty-four hours for each two dollars of such judgment and costs and a proportionate period of time thereafter for any part of such judgment and costs, less than two dollars, subject to the provisions of section —— of ordinance No. ——, of said city, unless such judgment and costs be sooner satisfied or the said C. D. be otherwise lawfully discharged; and upon such discharge, you, the said warden, are hereby directed to make due return to me of this writ, with your endorsement thereon, showing period of imprisonment and manner of discharge.

Given under my hand this —— day of ———, 18—.

[*Name of official and title of office.*] [L. S.]

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(1) See HAINES' TREATISE, title, "Docket Entries."

(2) See form of mittimus in Bollig, *ex parte*, 31 Ill. R., 91.

Unless authority plainly exists, and when given, before it can be exercised there must be a judicial ascertainment by a competent tribunal, before a party can be committed to jail for non-payment of a fine for violation of a city ordinance. Dillon on Mun. Corp., § 287, 270.

As the penalty for the violation of a by-law is considered in the nature of liquidated damages, an action of debt lies to recover the amount of the penalty. But aside from the statute or a valid custom, it is not competent for a by-law to provide that its penalty should be recovered by distress and sale of goods, that being contrary to the common law. Dillon on Mun. Corp., § 342; note to § 287.

Offenders violating the ordinances of a city may, on conviction be imprisoned, if they are unwilling to pay the fine. A summary mode of dealing with them is indispensible to safety of society. The imprisonment is but an incident to the fine. *Ex parte*, Bollig, 31 Ill. R., 91.

A proceeding to collect a penalty for the violation of a town ordinance, such as assault and battery, is a civil suit. Such penalty cannot be recovered in any criminal proceedings. *Hoyer et al.* v. *Mascoutah*, 59 Ill. R., 137; see *ante* p. 66, note 1.

(3) See Rev. Stat., p. 403, § 370; HAINES' TREATISE, new ed., p. 727.

Upon the back of such mittimus, the magistrate shall endorse the names and residence of the principal witnesses against the defendant; (1) and the several officers into whose hands the same may come, shall endorse the date and manner of executing the same; and it shall be the duty of any such officer having possession of such mittimus, to furnish such defendant on demand, a copy thereof with the endorsements.(2) *Provided*, That the mayor (3) or city attorney may, if in their opinion the recovery of any judgment rendered against any defendant will not be jeopardized, or the welfare of said city will thereby be subserved, order the magistrate who has charge of the docket upon which is entered such judgment, to stay the issuance of any such mittimus on such terms and for such a length of time as may be deemed reasonable and just; and the city marshal is hereby authorized to delay the execution of any mittimus for a period not exceeding thirty days from the date thereof, by assuming the payment of such judgment and costs in case of the escape during such interim of such defendant; and any pledge of personal property voluntarily surrendered by the defendant to said marshal in consideration of such an undertaking by said marshal, may be sold in like manner and upon the same terms as the statutes of Illinois provide for sales of like property under executions, (4) and the proceeds thereof shall be by said marshal applied to the payment of such judgment and costs and expenses of such sale, and any suplus remaining shall be subject to the order of said defendant.

SEC. 11. Such mittimus against the body of the defendant as aforesaid, shall be sufficient to authorize the city marshal, or other officer into whose hands the same may come, to demand of the defendant the immediate payment of enough lawful money to satisfy such judgment and costs, and upon failure or refusal of such defendant so to pay on demand as aforesaid, such judgment and costs, such mittimus shall be sufficient to authorize such officer to arrest such defendant and commit him or her for a period not exceeding six months in the city prison, or other safe place, provided for the custody of offenders against the ordinances of said city; (5) and such mittimus shall be sufficient to authorize the warden in charge of such city prison, or other safe place of custody, to receive the body of such defendant, and him or her safely keep in custody as aforesaid, twenty-four hours for each ($2) two dollars of such judgment and costs, and a proportionate period of time thereafter for any part of such judgment and costs less than ($2) two dollars; subject, however, to the provisions of section 12, hereof, or until such judgment and costs are fully paid, or defendant is otherwise lawfuly discharged.

SEC. 12. Every person so committed to prison on an execution against his or her body as aforesaid, shall, under the direction of the city marshal, work for said city upon its streets, if his or her strength will permit, or at such other labor as said city shall provide, not exceeding ten hours each working day, and at the rate of two dollars for each day's work, exclusive of board, until such judgment and costs aforesaid are paid, and

(1) See Rev. Stat., p. 403, § 369, HAINES' TREATISE, new ed., p. 727.

(2) See Rev. Stat., p. 403, § 371, HAINES' TREATISE, new ed., p. 727.

(3) See *ante* p. 26, § 22.

(4) See Rev. Stat., p. 650, 651; HAINES' TREATISE, new ed., p. 533,

(5) See *ante* p. 67, § 68.

when so paid, shall be discharged from imprisonment:(1) *Provided*, No credit shall be allowed by reason of any such imprisonment on any such judgment and costs, where the person committed refuses to labor for said city, or refuses to obey orders respecting such labor or acts when so laboring in a disorderly manner, or escapes, or attempts to escape, at any time from such custody or imprisonment aforesaid. But such person may be kept in custody as aforesaid for the full term of six months, unless sooner discharged by the Mayor or City Council of said city.

SEC. 13. Like proceedings shall be had under the ordinances of said city against minors, for the violation of any ordinance of said city, as are herein prescribed against other persons.

SEC. 14. Trial by jury, (2) continuances (3) and changes of venue, (4) as well as appeals, shall be allowed, consistent with the ordinances of said city, to any defendant, on the same terms and in like manner as such proceedings are granted by the statutes of this state before justices of the peace in civil cases; but the same shall not be allowed to said city, except at the request of the mayor or city attorney thereof. Like processes may issue and legal proceedings be had to enforce the ordinances of said city of ———, in addition to the remedies in said ordinances prescribed, and like practices, pleadings and rules of evidence be observed as now or may hereafter obtain in such civil cases aforesaid, and the city marshal, policemen, several officers and magistrates of said city as well as all other officers and persons authorized by law, rendering services to said city by virtue of any ordinance of said city, or law of said State of Illinois, shall, unless otherwise directed by ordinance, charge the same fees, to be taxed as costs, as are allowed in the statute of said state for similar services:(5) *Provided*, No officer or person shall collect or retain from said city a fee in any case in which, if the people of the State of Illinois were plaintiffs, such officer or person would be entitled to no fees from said state.(6)

SEC. 15. The building situated in said city on [*describe the location of building*], known as the "calaboose," shall constitute the city prison of the city of ———, and the keeper of said building shall be known and styled as the warden thereof.

SEC. 16. All fines and penalties shall be paid by the defendant or officer collecting the same, to the magistrate in charge of the docket upon which the judgment against such defendant is entered, and such magistrate shall immediately pay over to the city treasurer of said city, such collection,

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(1) See *ante* p. 67, § 68.]

(2) See Rev. Stat., p. 644, § 44; p. 520, § 46. HAINES' TREATISE, p. 383, 503.

(3) See Rev. Stat., p. 646, § 61; HAINES' TREATISE, new ed., p. 372.

(4) See Rev. Stat., p. 642, § 61; HAINES' TREATISE, new ed., p. 376. Costs of change of venue abide the result of the suit. HAINES' TREATISE, new ed., p. 376, Rev. Stat., p. 642, § 31.

(5) See Laws 1877, p. 108. HAINES' TREATISE, new ed., p. 946; *ante* p. 111, § 177.

In an action *qui tam* for penalties, there must be a reasonable and well founded belief of the guilt of the defendant,—a very slight preponderance will not suffice. *Toledo, Peoria, Warsaw R. R. Co.* v. *Foster, ex rel People*, 43 Ill. R., 480; *Ruth* v. *City of Abingdon*, 80 Ill. R., 418. Defendant's admission of a violation of an ordinance is competent evidence. But it is not competent for a municipal corporation without express authority, to make or alter the rules of evidence or law, in prosecutions to enforce ordinances. The ordinary rules of evidence apply except so far as specially modified by statute. Dillon on Mun. Corp., § 350.

A prosecution for the violation of a city ordinance prohibiting the sale of liquor, is not a criminal proceeding, and the defendant is a competent witness in his own behalf. *Graubner* v. *The City of Jacksonville*, 50 Ill. R., 87.

(6) See Rev. Stat., p. 518; HAINES' TREATISE, new ed., p. 946.

taking for the same duplicate receipts of said treasurer, substantially of the following form:

Received of A. B., magistrate, ——— dollars and ——— cents, on a judgment of $———, assessed against C. D., at —— page of said magistrate's docket.

This —— day of ———, 18—.

A. B., City Treasurer.

It shall be the duty of such magistrate to prepare such duplicate receipts for said treasurer to sign, and immediately after such receipts are executed by said treasurer, to file one of said receipts with the city clerk of said city; and no such collection shall be deemed to have been received by said city until such duplicate receipt is filed with said city clerk.

SEC. 17. The city marshal and all policemen of said city shall, and any officer of said city may, arrest on view, without warrant, any person in the act of violating any ordinance of said city, (1) or where such officer has reasonable grounds to believe that such person has recently violated such ordinance and will likely escape before warrant can be issued, and take such person before some magistrate of said city, for trial, as hereinbefore prescribed:(2) *Provided*, That any person so brought before such magistrate for trial, with or without warrant, and who cannot be tried because of the absence of witnesses, or other causes, and who fails to give bail, may be detained for trial, in the city prison, upon the written order of such magistrate, stating cause of such detention, not exceeding three days, unless at the instance of such person.

SEC. 18. This ordinance shall be known as ordinance No. —.

Passed ———, 18—.

Approved ———, 18—.

Published ———, 18—.

A. B., Mayor.

{ L. S. } Attest:

C. D., City Clerk.

(1) See *ante*, p. 75, § 83.

A constable may, without warrant, arrest any one for a breach of the peace, committed in his view, and carry him before the justice of the peace, and in case of a felony actually committed, or a dangerous wounding, whereby felony is likely to ensue, he may, upon probable suspicion, arrest the felon, and for that purpose is authorized, as upon a warrant, to break open doors, and even kill the felon if he cannot otherwise be taken. The powers of policemen are not greater than those of a constable in this respect. *Shanley* v. *Wells*, 71 Ill. R., 79.

(2) See *ante* p. 75, note 2.

Form of ordinance concerning license to sell liquor.

ORDINANCE NO. —.

AN ORDINANCE concerning licensing the sale of liquors.

SECTION 1. *Be it ordained by the city council of* ————, That it shall be unlawful, within the territorial jurisdiction of said city, for any person or corporation, as principal, clerk, servant, or agent, or by another person or corporation, directly or indirectly, to sell, or give away, for profit or gain, any intoxicating, malt, vinous, mixed, or fermented liquors, of any name, nature or admixture, in any quantity whatever, without first obtaining a license so to do, as herein afterwards provided, under penalty for so doing, for each offense, of not less than twenty dollars, or more than one hundred dollars.(1)

SEC. 2. The city council may, subject to the revenue laws of the United States,(2) the laws of this state, and the ordinances of this city, authorize by resolution, any person or persons, not constituting a corporation, to sell or give away, within the corporate limits of said city, all or any of the liquors mentioned in the first section of this ordinance, and direct that a license, signed by the mayor, and attested by the city clerk, under the seal of said city, be issued by said clerk, to such person or persons, upon him, her or them, paying into the city treasury, in installments, or otherwise, a sum of money of an amount to be fixed in such resolution by the city council.(3)

Such license, when issued, and styled wholesale license, shall authorize the selling and giving away of all the liquors mentioned in section 1, in any quantity not less than one gallon.

Such license, when issued, and styled retial license, shall authorize the selling and giving away of all the liquors mentioned in section 1, in any quantity whatever.

Such license, when issued, and styled druggist license,(4) shall authorize the selling and giving away of all the liquors mentioned in section 1, in any quantity exceeding one gallon for any purpose whatsoever, and in less quantity than one gallon for purely medical, mechanical, sacramental and chemical purposes only.

Such license, when issued, and styled limited license, shall authorize the selling and giving away in any quantity, malt or vinous liquors only.

Any person to whom either of the above named licenses shall be granted as aforesaid,(5) who shall sell or give away any of the liquors mentioned in section 1, not expressly authorized under his or her license, as defined in this section, shall be subject to a penalty of not less than twenty

(1) See *ante* p. 55, clause 48; page 53, note 1.

A party being a brewer of beer, not to be sold on the premises, being unwell, and confined to his house, and some person calling to see him, he sent for a pitcher of beer and invited all to drink, and one of the parties became intoxicated. *Held*, that the case was not one contemplated by the sixth section of the act of 1873, and no conviction can be had. *Albrecht* v. *The People*, 78 Ill. R., 510.

(2) A license granted under the internal revenue laws of the United States, confers no power to exercise a trade, business or calling, but it was only to tax the exercise of the trade, or occupation, authorized by the state authorities. Congress has no power to authorize the exercise of a business prohibited by the laws of a state. *Block* v. *The Pres. and Trustees of the Town of Jacksonville*, 36 Ill. R., 301.

(3) See *ante* p. 53, note 1; *ante* p. 54, note 1 to p. 53; *ante* p. 54, note 1.

(4) See *ante* p. 52, clause 46; p. 54, note 1.

(5) See *ante* p. 54, note 1 to p. 53; p. 55, note 1 to p. 53; p. 55, note 1.

dollars, or more than one hundred dollars, and forfeiture at the election of said city council, of his or her license.(1)

SEC. 3. Any person desiring any such license aforesaid, shall file with the city clerk, an application in writing, setting forth the location of the building, or room, to be occupied; the kind of license, and length of time the same is wanted, and the name and residence of the sureties offered, on his or her bond, to the people of the State of Illinois; or in lieu thereof, shall file with such application, said bond, duly executed and signed by such sureties, and the city council shall grant or reject any such application, and direct, by resolution, in case of approval, the issuance in the manner aforesaid, of the license sought, for any term not extending beyond the current municipal year;(2) and, unless otherwise provided in such resolution, the sum of money charged for such license, shall be paid to the city treasurer quarter-annually, in advance,(3) on the third Tuesday of April, July, October and January, except that the first installment shall be paid when the license is issued for the whole, or fractional part, as the case may be, of the current quarter.

SEC. 4. No license aforesaid shall be issued until such applicant for the same, shall have first filed with the city clerk a bond, in the penal sum of three thousand dollars, payable to the people of the State of Illinois, and signed by such applicant with at least two good and sufficient sureties, who shall be freeholders of ——— county, Illinois, approved as aforesaid, by the the city council, and conditioned that such applicant will pay to all persons all damages that they may sustain either in person or property, or means of support, by reason of such applicant selling or giving away intoxicating liquors; (4) and, also, shall have first filed with the city clerk a duplicate receipt of the city treasurer, of the money paid on such license; and also, shall have paid the city clerk the fees allowed him by the ordinances of said city for making out said bond and issuing such license.

SEC. 5. Such license aforesaid shall state the kind of license, the time for which it is granted, the name of the person or persons to whom it is granted, the house or place intended to be occupied, that such license shall be used and the privileges granted thereunder, shall be exercised at such place only, that such license shall not be transferable, (5) nor assignable, and shall be conditioned that any violation of this ordinance shall work a forfeiture of such license, and all sums of money which may have been paid thereon, at the election of the city council—and all such license may be substantially in the following form:

Know all men by these presents, That whereas, the city council of the city of ———, have, by resolution, authorized, under ordinance, No. 2, of said city, the issuance of a ——— license to one A. B.

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(1) See *ante* p. 53, note 1.

(2) For definition of municipal year, see *ante* p. 111, § 176.

(3) A tender of a certificate of indebtedness to police commissioners, in payment of a license, where the ordinance provides that payment should be made only in United States currency or city orders; held, not good. *The City of East St. Louis* v. *Wider*. 46 Ill. R. 351.

A public officer has no authority to take a note to himself, in his official capacity, for the granting of a license to sell liquor. *Munsell* v. *Temple*, 3 Gilm R., 93.

(4) See Rev. Stat., p. 439, § 5.

(5) A license to keep a grocery or sell liquor is not transferable. *Munsell* v. *Temple*, 3 Gilm., R., 93.

Now, this is to witness, That pursuant to said resolution, the said A. B. is hereby authorized and licensed as aforesaid, from the date hereof, for a period ending ——, with the current municipal year of said city, to sell or give away the liquors authorized by said ordinance, under such license, in the front —— room of the first story of a —— story building, situate on lot No. —, of ——— addition to the town of ———, within the corporate limits of said city, and at no other place, in consideration of the payment of —— dollars to the city treasurer of said city already made, and upon the successive payments hereafter of —— dollars on each third Tuesday of the months of April, July, October and January, of said municipal year.

Subject, nevertheless, to this express condition, that immediately upon the assignment of this license, the same is declared null and void; and that at any time after the conviction of the said A. B., for the violation of any of the provisions of said ordinance, this license may be revoked at the option of said city council, and all payments of money which may have been made hereon, shall thereupon be forfeited to said city.

In testimony whereof, I, ———, mayor of the city of ———, have set my hand, and caused the corporate seal of said city to be affixed, by the city clerk of said city, this —— day of ——, A. D. 18—.

{ L. S. }

Attested by A. B., Mayor.

C. D., City Clerk.

SEC. 6. It shall be unlawful for any person who shall keep what is defined in the revised statutes (1874) of Illinois, a dram shop, under any license aforesaid, by himself, herself, agent or servant, to sell or give away, any of the liquors mentioned in Section 1, of this ordinance.

To any minor without the written order of his or her parents, guardian, or family physician;(1) or

To any person intoxicated, or who is in the habit of getting intoxicated; (2) or

On Sunday, a public holiday, or any general or special election day, or between 11 o'clock p. m. and 5 o'clock a. m. of any day; (3)

Under penalty for so doing, for each offence herein stated, of not less than twenty dollars, or more than one hundred dollars, and forfeiture, at the election of said city council, of his or her license.

SEC. 7. It shall be unlawful for any person who shall keep what is defined in the Revised Statutes (1874) of Illinois, a dram shop, under any license aforesaid, by himself, herself, agent, or servant;

To allow his or her dram shop to be open on Sunday, (4) a public holi-

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(1) See Rev. Stat., Ch. 43, p. 439, § 6; *ante* p. 55, clause 48.

A party selling liquor is bound to know whether a person buying is a minor or not. *Farmer* v. *The People*, 77 Ill. R., 322.

In a prosecution under an ordinance for selling liquors to minors, without any written order from parents, etc., it is sufficient, to sustain a conviction, to show that the article sold was intoxicating, if taken in sufficient quantity. It matters not whether the vendor knew such fact or not. *Byars* v. *City of Mt. Vernon*, 77 Ill. R., 467.

(2) Evidence that a party has been seen by witnesses frequently under the influence of intoxication, and was in the habit of using liquor intemperately, is sufficient proof that he was in the habit of getting intoxicated. *Mapes* v. *The People*, 69 Ill. R., 523; See Rev. Stat., Ch. 43, § 6, p. 439.

(3) See *ante* p. 53, note 1; *ante* p. 54, note 1 to p. 53.

(4) Sundays include the time from midnight to midnight. Rev. Stat., p. 391, § 260, Crim. Code.

day, or any general or special election day, or between 11 o'clock p. m. and 5 o'clock a. m. of any day, or suffer any person, at any of such times, to pass in and out, or frequent, or loiter about the same; or

To allow any minor, without the written permission of such minor's parents, or guardian, to frequent, remain at or loiter in or about his or her dram shop; or

To allow any person to play at any game wherein is used any card, dice, check, ball, billiard table, bagatelle table, Jenny Lind table, pigeon hole table, or other table, article or thing whatsoever, (1) for the purpose of amusement, betting, winning, or losing money, or other thing, or article of value, or for any other purpose whatsoever, in or about his or her dram shop, or in any manner relating to or connecting with the same, (except that the city council may, by resolution, at any regular meeting, license the playing of any such game for amusement only), under penalty, for so doing, for each offence herein stated of not less than twenty dollars, or more than one hundred dollars, and forfeiture at the election of said city council of his or her license.

SEC. 8. The giving away of intoxicating liquors, or the disposing of the same, in any manner, through any "club," combination, association, or corporation, of two or more persons, or other shifts, tricks, devices, or subterfuges, for the evasion of any of the provisions of this ordinance, shall be held to be an unlawful selling and giving away of the liquors mentioned in section 1, and shall subject the offender to the same penalty as in said section 1, provided.(2)

SEC. 9. The city marshal, policemen, and other officers of said city, shall have the right to enter any place where liquor is sold, or given away, under any such license aforesaid, whenever such place is open, if such officers deem it necessary in the discharge of their duties; and if any person licensed, as aforesaid, shall refuse to permit any such officer to enter his or her premises, where such liquors are sold, or given away, as aforesaid, whenever the same is open, he or she shall be subject to a penalty of not less than twenty dollars, or more than one hundred dollars.

SEC. 10. All rooms, taverns, eating houses, restaurants, drug stores, groceries, coffee houses or other places of public resort, where intoxicating liquors of any kind or nature, are sold in violation of this ordinance, shall be deemed public nuisances, and whoever shall keep such place by himself, herself or servant shall, for each offence, be fined not less than fifty dollars, nor more than one hundred dollars, and it shall be a part of the judgment upon the conviction of the keeper, that the place so kept, shall be shut up and abated(3) until the keeper thereof shall give bond, with sufficient security, to be approved by the court before whom such conviction is had, in the penal sum of one thousand dollars, payable to the people of the State of Illinois, conditioned that he or she will not sell intoxicating liquors contrary to the ordinances of the said city of ———, and will pay all fines and costs assessed against him or her for any violation of said ordinances of the said city of ———, and any person or persons who shall open any building or place that has been ordered shut up and abated, under the provisions of this ordinance, shall be fined for each offence one hundred dollars.

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(1) See *ante* p. 52, clause 44.

(2) See *ante*, p. 55, note 1; Rev. Stat., ch. 43, p. 440, § 13.

(3) See Rev. Stat., p. 439, § 7; *ante* p. 55, note 1; *ante* p. 54, note 1 to p. 53.

SEC. 11. This ordinance shall be known as ordinance No. —.(1)
Passed ———, 18—.
Approved ———, 18—.
Published ———, 18—.

A. B., Mayor.

{ L. S. } Attest:
C. D., City Clerk.

Form of ordinance concerning corporate seal.

ORDINANCE NO. —.

AN ORDINANCE providing for the corporate seal of the city of ———.

SECTION 1. *Be it ordained by the city council of* ————, That the corporate seal of said city, shall be circular in form, and be so constructed as to impress upon paper the words, "City Seal," in a circle formed by the words, "City of ———, ——— County, Ill."

SEC. 2. The said seal shall be and remain in the custody of the city clerk of said city,(2) and his successor in office, to be used by him in all cases, provided for by the ordinances of said city, or the laws of the State of Illinois; and in all such other cases where, by the laws and customs of any state or nation, the use of the corporate seal of said city becomes necessary.

SEC. 3. This ordinance shall be known as ordinance No. —.
Passed ———, 18—.
Approved ———, 18—.
Published ———, 18—.

A. B., Mayor.

{ L. S. } Attest:
C. D., City Clerk.

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(1) Where the authorities of a town adopted a subsequent ordinance, revising the whole subject of selling or dealing in spirituous liquors; that this must be taken as a substitute for all prior ordinances on the same subject, although the last contained no words of repeal. *Booth* v. *The Town of Carthage*, 67 Ill. R., 102.

(2) See *ante*, p. 74, § 81. Rev. Stat., p. 226.

Form of ordinance concerning pounds, and impounding animals.

ORDINANCE No. —.

AN ORDINANCE to establish a pound, and to provide for impounding animals.

SECTION 1. *Be it ordained by the city council of* ————, That it shall be unlawful for any horse, mare, gelding, colt, mule, ass, sheep, swine, goat, or neat cattle, except cows giving milk, to run at large within the corporate limits of said city contrary to the provisions of this ordinance;(1) and the running at large as aforesaid of any or all of the aforesaid animals is hereby declared a nuisance, which the city marshal, or any policeman of said city, shall instantly abate upon view by taking up and confining any such animal in some certain pen, stable or inclosure, to be known and designated as the pound of said city.(2)

SEC. 2. Said pound shall be centrally situated within the corporate limits of said city, and accessible freely and without hinderance, during the day-time, to all persons in search of animals at large, and such pound shall be maintained under the care and supervision of the city marshal, at his own expense, in consideration of the allowance to him by said city, of the fees chargable by him in section 12 of this ordinance:(3) *Provided*, That such pound shall be subject to the inspection and condemnation of the city council, and that upon the refusal of said marshal to accept the care and custody of said pound at his own expense, upon the terms aforesaid, the city council may direct that the said fees chargable herein by said marshal, shall be paid over by him to the city treasurer, and that such pound be maintained under the supervision and at the expense of said city.

SEC. 3. Any animal so impounded shall be held for two days exclusive of the day of impounding without further legal proceedings during such time, subject to redemption by the owner in the manner hereinafterwards provided. And it shall be the duty of the officer so impounding such animal, within the period aforesaid, to make reasonable inquiry respecting the ownership of the same and to notify the owner, or supposed owner thereof, or some member of such owner's family, over the age of twelve years, that such animal is so impounded, and that the same is held subject to redemption, upon the payment of the pound charges.(4) Such notice shall be signed by such officer, and served by copy.

SEC. 4. The officer impounding any such animal shall, unless the same is redeemed within the time specified in section 3,(5) cause the owner or supposed owner thereof, to be summoned before some magistrate of said

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(1) See *ante* p. 61, clause 80.

The legislature has conferred power upon cities to declare what shall constitute a nuisance. Under this power an ordinance declaring swine running at large, a nuisance, is proper. *Roberts* v. *Ogle*, 30 Ill. R., 459; *Westgate* v. *Carr*, 43 Ill. R., 450.

(2) See *ante* p. 61, note 1.

Parties not officers may assist an officer to impound hogs. *Friday* v. *Floyd*, 63 Ill. R., 50.

(3) See *ante* p. 62, clause 86; p. 61, note 1.

(4) See *ante* p. 62, clause 86; p. 61, note 1.

(5) Where an ordinance requires that not less than ten days' notice shall be given before a sale of an impounded animal shall be made, this is an essential prerequisite of the sale, and cannot be dispensed with by the officer. *Clark* v. *Lewis*, 35 Ill, R., 422.

city, to show cause, if any, why such animal so impounded, should not be sold according to the provisions of this ordinance.(1)

SEC. 5. When the owner of any animal so impounded is unknown to the officer impounding the same, such officer shall (upon the expiration of the two days for redemption first, provided for in section 3), file within a a reasonable time with some magistrate of said city, a statement in writing signed by him, of the number and kind of animals so taken up by him, and the time of such taking up and impounding, and that the owner or owners thereof are unknown to him; whereupon such magistrate shall cause to be posted up in three of the most public places of said city, a notice describing the property so taken up, and the time of such taking up, and notifying therein the owner or owners thereof to appear before such magistrate at an hour and on a day therein named, not less than five or more than fifteen days from the day of such posting, then and there to show cause, if any, why such property should not be sold to satisfy the demand of said city for the subsistance, pound fees and costs consequent upon the impounding of such property.(2)

SEC. 6. The officer posting such notices shall immediately make return upon oath upon a copy thereof, of the time and places of such posting. Upon such return being made, the magistrate shall docket the cause, as the city of ——— *versus* the unknown owners of impounded property. The owner may appear and be made defendant at any time before final judgment.(3)

SEC. 7. If no owner shall appear at the time fixed for trial in said notices, the magistrate shall summons a jury of six persons,(4) having the legal qualifications, who shall be duly sworn to determine upon the evidence, the extent, if any, of the lawful claim of said city, against said property, and in their verdict shall fix the amount of such claim, if any, against each animal; and upon verdict being rendered in favor of said city, the magistrate shall render a judgment thereupon substantially in the following form:

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(1) A town cannot by its by-laws authorize a pound master to sell property without a judicial ascertainment that some law has been violated. And a sale without judicial ascertainment will pass no title. *Poppen* v. *Holmes*, 44 Ill. R., 360; *Willis* v. *Legris*, 45 Ill. R., 289.

In a proceeding to assess damages done by stock running at large, the owner is entitled to a trial by jury, the same as in cases at law, and could not be deprived of that right. *Bullock* v. *Geomble*, *ante* p. 61, note 1.

Power to impound and forfeit domestic animals must be expressly granted to the corporation, and laws or ordinances authorizing the officers to impound, and upon specified proceedings to sell, are penal in their nature, and where doubtful in their meaning will not be construed to produce a forfeiture of the property. That if an officer sells without giving the requisite notice or for the full length of time required, he is liable to the owner, although the owner sustains no actual injury from the omission, or the owner may treat the sale as void and recover his property. Dillon on Mun. Corp., § 101.

(2) Before an owner can maintain replevin for stock taken up under the law of 1867, it was held that he must show that he demanded the cattle from the party impounding the same, and offered to pay him fifty cents per head for taking up the same, and the price of one-half bushel of corn per head per day during the time the defendant had them in possession. *Holcomb* v. *Davis*, 56 Ill. R., 413.

(3) An owner of animals impounded, if known, should receive personal notice, and if not known, there should be constructive notice to him, by posting, describing the property therein. *Poppen* v. *Holmes*, 44 Ill. R., 360.

(4) A sale of property by a pound master, without judicial ascertainment first being had, will not divest the owner of his title. The owner is entitled to a trial by jury, to have it ascertained whether a penalty has been incurred or not. *Poppen* v. *Holmes*, 44 Ill. R., 360. See Const., 1870, Bill of Rights, § 5.

State of Illinois, }
——— County, } ss.
City of ———. }

[*Here recite the commencment of the suit, and subsequent proceedings, according to the facts, and conclude thus :*]

It is adjudged upon the verdict of the aforesaid jury that said city have and recover for sustenance, pound fees and costs consequent upon the impounding of each of the following animals:

Against one [*specify animal*] $———
Against one [*do*] $———
Against one [*do*] $———

And the magistrate shall at once issue a special execution upon such judgment for the sale of said property, which shall be described in such execution, and which shall be directed and returnable as other executions from justices of the peace, and sale thereunder shall be made upon the same notice, and in the same manner as is by the Statute of Illinois provided in the case of the sales of personal property upon execution from justices of the peace.(1)

SEC. 8, Property sold under the provisions of section 7 hereof, may be redeemed by the owner thereof, from the purchaser at any time within three months from the time of such sale upon the payment to such purchaser of the amount paid by him, with interest thereon, at the rate of ten per cent. per annum, and the expense of keeping such property; and of the right of the owner to redeem, the officer making such sale shall, at the time of sale, give notice, and in his return on said execution shall specify the amount each animal sold for.

SEC. 9. If at any sale, under the provisions of this ordinance, no person shall bid the whole amount of costs for taking up, keeping and selling any such animal, the city marshal may, for himself, bid thereon the amount of such costs and charges; and no person bidding more, he may strike such animal off to himself.

SEC. 10. The proceeds of any such sale shall be paid over to the magistrate issuing any such execution, who after deducting the amount of the judgment and costs, and subsequent sustenance of each animal, to day of sale; and also after allowing the officers for making the sale, the same costs chargable by any constable for sale of personal property under execution, shall turn over to the city treasurer, the surplus proceeds of such sale, taking said treasurer's duplicate receipt for the same, filing one receipt with city clerk. The treasurer shall keep a separate account of such surplus, which shall be paid over to the owner of the property so sold at any time within three years from such sale, upon the direction of the city council.

SEC. 11. All animals, whether impounded by a policeman or other person, under the direction of any officer of said city, shall be considered as having been impounded by the city marshal, and said marshal shall be held personally responsible to any person aggrieved for the improper impounding of any animal: *Provided*, That the city Marshal, or any policeman of said city, or any other person who shall wilfully drive or entice

(1) See Rev. Stat., p. 650; HAINES' TREATISE, new ed., p. 931.

A sale by a pound master cannot be sustained, where he sells two animals belonging to different owners together at the same bidding. They must be sold separately. *Clark* v. *Lewis*, 35 Ill. R., 417.

any animal from beyond the corporate limits of said city into the same, or shall aid or abet the same, or shall let any animal out of any enclosure in which it may be lawfully confined, or aid or abet in the letting out or escape thereof, in order to take up or impound the same, shall be subject to a penalty of not less than five or more than fifteen dollars for each offence.

SEC. 12. The following fees shall be chargable and collectable by the city marshal; that is to say: For taking into the pound and discharging therefrom:

Each horse, mare, gelding, colt, mule or ass	50 Cents.
" Neat cattle	50 Cents.
" Swine (large or small)	25 Cents.
" Sheep or goat	15 Cents.

For sustenance provided each animal per meal, to be given at 7 o'clock a. m., at noon, and 6 o'clock p. m.:

Each horse, mare, gelding, colt, mule and ass	15 Cents.
" Neat cattle	10 "
" Swine (large or small)	5 "
" Sheep or goat	5 "
For serving notice per copy (see Sec. 3)	25 "
" Traveling expenses, serving same, each way, per mile,	5 "
" Posting and returning notices under section (see Sec. 5)	75 "
" Magistrate's fee, preparing same (4 copies)	75 "

For other services hereunder no fees other than such as are provided by the statutes of the State of Illinois.

Any owner or person entitled to the possession of any animal, shall have the right to release and redeem the same from the pound at any time before sale, by the payment of the above fees and charges, to the extent only that the same shall have accrued, and no animal shall be released until such fees are paid. But such animal shall be regarded as lawfully in the possession of said city, when so impounded as aforesaid, although the same was running at large without the consent of the owner or person claiming possession thereof, and for the purpose of enforcing the collection of the above fees and charges, it shall be sufficient to justify the detention and impounding of such animal or animals aforesaid, if it shall appear in the evidence that the same were running at large within the corporate limits of said city at the time the same was impounded.

SEC. 13. The city council may, by resolution, at any regular meeting, allow for a specified time any of the above animals named in section 1, to run at large within the corporate limits of said city.

SEC. 14. If the city marshal, or any policeman of said city, shall wilfully fail, neglect or refuse to impound any animal running at large contrary to the provisions of this ordinance, such officer shall be subject to a penalty of five dollars in each and every case.

SEC. 15. Any person who shall break open any stable, pen, lot or other enclosure where any animal is impounded, or shall in any manner release or rescue any animal from such stable, pen, lot, or other enclosure where the same is impounded, shall be subject to a penalty of not less than five dollars or more than twenty-five dollars.

SEC. 16. Whosoever shall hinder, delay, resist, or obstruct any officer or any person, acting under the immediate directions of such officer, in the discharge of the duties imposed by this ordinance on such officer, or

shall aid, encourage, or abet the same, shall be subject to a penalty of not less than five dollars or more than fifteen dollars.

SEC. 17. This ordinance shall be known as ordinance No. —.

Passed ———, 18—.
Approved ———, 18—.
Published ———, 18—.

A. B., Mayor.

{ L. S. } Attest:
C. D., City Clerk.

Form of ordinance concerning licensing billiard tables and other games.

ORDINANCE NO. —.

AN ORDINANCE to regulate and provide for licensing billiard tables and other games.

SECTION 1. *Be it ordained by the city council of* ————, That it shall be unlawful for any person or persons within the corporate limits of said city, to exercise the business, trade or avocation of keeper of a billiard table, bagatelle table, Jenny Lind table, pigeon hole table, nine or ten pin alley, shooting gallery, or shuffle board, without first being licensed so to do by the city council of said city, as herein afterwards provided, under penalty for exercising such business, trade or avocation without license, of not less than ten dollars or more than one hundred dollars.(1)

SEC. 2. The city council may grant or reject any application for such license (and fix by resolution the amount of license fee) at their discretion, and any person or persons desiring such license, shall file with the city clerk an application therefor, in writing, setting forth the location of the building or room to be occupied, the kind of license, and the length of time the same is wanted, and the name and residence of the surety or sureties offered on the bond required in section 3 of this ordinance.(2)

SEC. 3. Before any license under this ordinance is granted, the applicant or applicants therefor, shall execute a bond, payable to the city of ———, in the penal sum of two hundred dollars with surety, conditioned that the person or persons to whom such license is granted, shall observe all laws and ordinances of said city that may be in force regulating or relative to such business so licensed, which bond shall be approved by the city council and filed with the city clerk before the issuance of such license.

SEC. 4. License issued under this ordinance, shall be signed by the mayor, and attested under the seal of said city by the clerk, and shall state the nature of the employment thereunder licensed, the time for which it is granted, the name of the person or persons to whom it is granted, the house or place intended to be occupied, that such license shall be used and the privileges granted thereunder, shall be exercised at such place only,

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(1) See *ante* p. 52, clause 44.

A party having the general superintendence and care of a gaming house though simply an employee of the house, may be regarded as the keeper, as aiding or abetting the commission of an offense in keeping the house to justify his conviction for the offense. *Stevens* v. *The People*, 67 Ill. R., 587.

(2) An Ordinance may discriminate as to price in regard to location, but not between persons having equal facilities for profit. See *ante* p. 54, note 1.

and that such license shall not be transferable nor assignable, and shall be conditioned that any violation of this ordinance, shall work a forfeiture of such license, and all sums of money which may have been paid thereon, at the election of the city council.

SEC. 5. No person holding license under this ordinance, shall suffer or permit any minor, under the age of 18 years, to frequent or loiter about the premises so occupied by him, without the written permission or order of the parent, master or guardian of such minor, or shall sell, barter, exchange or give away, in connection with such business, any intoxicating liquors, contrary to the ordinances of this city; nor shall suffer or permit any batting, gaming, riotous or disorderly conduct upon the premises occupied by him. Any person violating any of the provisons of this section shall be fined in a sum not less than twenty dollars nor more than one hundred dollars. Any shift or device to evade this section shall be deemed a violation thereof.

SEC. 6. Every person who shall take out a license under the provisions of this ordinance, shall close his place of business at 11 o'clock every night and keep the same so closed, until five o'clock the next morning; nor shall he permit to be kept open his place of business on Sunday; or admit any person not belonging thereto into his place of business on Sunday. Any person violating any of the provisions of this section, shall be fined in a sum not less than twenty dollars nor more than fifty dollars.

SEC. 7. Every room or place kept open by virtue of license under this ordinance, shall be subject to inspection by the city marshal or any police officer, at any time such marshal or police officer may deem it necessary to go into the same, and any person or persons hindering, resisting, opposing or attempting to hinder, resist or oppose the marshal or such police officer, while he may go into or attempt to go into such room or place, shall forfeit and pay a fine of not less than ten dollars or more than twenty-five dollars.

SEC. 8. No person licensed under the provisions of this ordinance shall permit any kind of gambling in his place of business, either by means of cards, dice, balls and pins, or any other device; any person violating any of the provisions of this section, shall, upon conviction thereof, be fined in a sum not less than twenty dollars or more than fifty dollars.

SEC. 9. That the keeper or keepers of all tables or devices, by whatever name the same may be called, and all devises and schemes, however constructed, used or kept by any person or persons in said city, for the purpose of the playing of games for the gain or profit, direct or indirect, to such keeper, shall be, and are hereby declared to be, subject to the same rules and regulations, penalties and forfeitures as provided in this ordinance in relation to the keepers of *billiard tables*.

SEC. 10. This ordinance shall be known as ordinance No. —.

Passed ———, 18—.

Approved ———, 18—.

Published ———, 18—.

A. B., Mayor.

{ L. S. } Attest:

C. D., City Clerk.

Form of ordinance regulating merchants, auctioneers. etc.

ORDINANCE NO. —.

AN ORDINANCE to regulate and provide for licensing persons selling property, or exhibiting shows.

SECTION 1. *Be it ordained by the city council of* ————, That no merchant,(1) auctioneer, peddler,(2) or other person or persons, company or corporation, shall be permitted to sell, vend or retail, either at private sale or public auction, any goods, wares, merchandise, real estate, or other property, within the corporate limits of said city, without first having obtained a license so to do, as hereinafter prescribed, under penalty for so doing of not less than three dollars or more than fifty dollars.

SEC. 2. No person, company or corporation, shall be permitted to exhibit any show, exhibition, theatrical performance,(3) wax figures, animals, puppets, or perform any feat or trick, such as circus riding, or exhibition of anything of a like nature, for profit or gain, within the corporate limits of said city, without first having obtained a license so to do, under penalty for so doing, of not less than ten dollars or more than one hundred dollars.

SEC. 3. A license shall be granted to any person, company or corporation, to pursue the occupations specified in section one and two aforesaid, unless otherwise expressly ordered by resolution of the city council, and said council shall fix, by resolution, the amount of the license fee, to be paid in each case upon application being made to said council for that purpose.(4) But, during the time when the city council is not in session, the city clerk is hereby authorized by and with the advice of the mayor, or mayor *pro tem*, to issue such license for a term ending at noon the day after the first meeting thereafter of the city council, according to the following schedule of license fees:

Itinerant merchants, at retail	$ 1 00	per diem.
Auctioneers, $3 per diem	15 00	per week.
Foot peddlers	2 00	per diem.
Peddlers with one horse vehicle	2 00	do
Peddlers with two horse vehicle	3 00	do
Theatrical and other performances in hall	2 00	do
Circuses and exhibitions under large tent	25 00	do
Each side show under small tent	5 00	do

SEC. 4. Such license when issued shall be signed by the mayor, and in his absence by the mayor *pro tem*, and attested by the city clerk, under the seal of said city, and shall authorize the person or persons to whom the same is granted, to pursue any and all pursuits named therein, in the manner for the term and at the place set forth in such license; and the

(1) See *ante* p. 64, clause 91.

(2) See *ante* p. 51, clause 41.

(3) See *ante* p. 51, clause 41.

(4) Where the power is granted to a city, conferring power to regulate the selling of spirituous liquors, this power should alone be exercised by the council, and any attempt to delegate this authority to others is unwarranted. *The City of East St. Louis* v. *Wehrung*, 50 Ill. R., 28: *Kinmundy* v. *Mahan*, 72 Ill. R., 462.

Where a license to keep a grocery is fixed at $25, and a party gave to the treasurer of the county his note, the same was held void. The treasurer had no authority to take a note to himself in his official capacity. *Munsell* v. *Temple*, 3 Gilm R., 93; *City of East St. Louis* v. *Wider*, 46 Ill. R., 351.

same shall not be transferable or assignable, but such license shall be of no validity in the hands of any person other than the original grantee.(1)

SEC. 5. No license shall be issued and delivered to any person or persons, for any purpose whatever, until such person or persons shall file with the city clerk the duplicate receipt of the city treasurer, showing payment of the full amount of the license fee required under this ordinance, or by resolution of the city council.(2)

SEC. 6. The city clerk is hereby authorized to charge the applicant for any such license aforesaid, a fee of one dollar for issuing the same: *Provided*, That no additional fee shall be charged for a re-issue of license necessitated by a meeting of the city council, where the same was issued in the first instance by the city clerk, under the provision of section 3 of this ordinance.

SEC. 7. The provisions of this ordinance shall not apply to *bona fide* residents and tax-payers of ——— county, Illinois, or wholesale dealers.

SEC. 7. This ordinance shall be known as ordinance No. —.

Passed ———, 18—.

Approved ———, 18—.

Published ———. 18—.

A. B., Mayor.

{ L. S. } Attest.

C. D., City Clerk.

Form of ordinance concerning streets and sidewalks.

ORDINANCE NO. —.

AN ORDINANCE concerning streets and sidewalks.

SECTION 1. *Be it ordained by the city council of* ————, That it shall be the duty of the mayor, as soon as this ordinance goes into effect, to appoint, with the approval of a majority of all the aldermen of said city,(3) a city superintendent of streets,(4) who shall hold his office, unless removed according to the statutes of the State of Illinois, until the third Tuesday of April, A. D. 18—, or until his successor is duly appointed and qualified, and biennially thereafter from the date aforesaid, a city superintendent of streets shall be in like manner appointed.

SEC. 2. Before entering upon the duties of his office, the city superintendent of streets shall make and subscribe the usual oath of office and execute a bond for one thousand dollars, payable to the city of ———, with good and sufficient surety, to be approved by the city council, conditioned that he will truly account for all monies and property belonging to said city, which may come into his hands as well as faithfully execute the duties of his office.(5)

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(1) Cities have exclusive power within their limits to grant licenses. *President and Trustees of Mt. Carmel* v. *County of Wabash*, 50 Ill. R., 69; *Bennett* v. *The People*, 30 Ill. R., 389.

A license to pursue a business is not transferable. It attaches to the person andcannot be used by others, even with the consent of the authority which granted it. *Munsell* v. *Temple*, 3 Gilm R., 93.

(2) Where a fixed sum is made for a license, none can be granted for less. *Munsell* v. *Temple*, 3 Gilm R., 93.

(3) See Laws 1875, p. 41.

(4) See *ante*, p. 70, § 73.

(5) See *ante* p. 71, §75.

SEC. 3. The city superintendent of streets shall personally superintend all improvements ordered by the city council upon the streets, alleys and sidewalks of said city; he shall without delay, on the order of said council, cause all insecure and unsafe places in the streets and sidewalks of said city to be repaired and report the costs thereof to the city council for allowance.(1) When the probable cost of any such repair shall exceed twenty-five dollars, the same shall be made with the concurrence of the mayor. He shall annually, or as early as practicable in the spring of the year, cause the streets and alleys to be cleaned, and the gutters to be opened;(2) and he shall, as far as practicable, keep them in that condition during the year.

SEC. 4. The city superintendent of streets shall from time to time examine the condition of the streets, alleys, bridges, culverts, crossings, crosswalks and sidewalks, (3) and report the same to the city council, and recommend such improvements or repairs as he may deem needed. He shall warn out all able bodied male inhabitants, liable to labor on the streets and alleys, under the direction of the city council, and compel such to faithfully labor the time required (by the resolution of the city council) on the streets and alleys of said city; and shall collect a commutation of one dollar and fifty cents per diem from all parties so warned, who do not labor or furnish an able bodied substitute to labor in their stead. He shall be *ex.officio* a policeman of said city, and may arrest upon view any person in the act of violating any ordinance of said city.

SEC. 5. Every able bodied male inhabitant of the city of ———, above the age of twenty-one years and under the age of fifty years, (except the officers of said city and such other persons as are exempt from road labor under the statutes of Illinois), shall labor on the streets and alleys of said city, not to exceed three days in each municipal year: *Provided*, That every person subject to such labor, may in lieu thereof pay into the treasury of said city one dollar and fifty cents for each day he may be required to labor.(4)

SEC. 6. It shall be the duty of the city superintendent of streets to serve a notice upon each person subject to the performance of street labor at least three days before such person shall be liable to appear and perform such labor or pay money in lieu thereof,(5) which notice shall be substantially as follows:

State of Illinois, }
City of ———. } ss.

To A. B. *Sir:*—You having been duly assessed a poll tax to labor on the streets and alleys in said city of ———, for the year 18—, —— days; you

(1) It is a duty resting on cities to keep their streets and sidewalks in a safe condition for persons passing along and over them, but are not bound to keep them absolutely safe, but are bound to keep them reasonably safe. *The City of Rockford* v *Hildebrand*, 61 Ill. R., 155; *City of Centralia* v. *Krouse*, 64 Ill. R., 19.

When a sidewalk has been properly constructed with reference to safety, and through long use or natural decay, has become unsafe, before a party can recover of the city for injuries sustained in consequence thereof, it must appear that the city knew, or could have known, by the exercise of reasonable diligence, its unsafe condition, and sufficient time must have elapsed after notice in which to make the repairs. *City of Chicago* v. *Langlass*, 66 Ill. R., 361.

(2) A city holds the fee of its streets in trust for the benefit of all the corporators. *Carter* v. *City of Chicago*, 57 Ill. R., 283.

(3) It is the duty of a town to take notice of the condition of its own sidewalks. *Alexander* v. *Pres. and Trustees of Mt. Sterling*, 71 Ill. R., 366.

(4) See Laws 1875, p. 62; see *ante* p. 68, § 71.

(5) The persons subject to the performance of street labor are every able bodied male inhabitant above the age of twenty-one years, and under the age of fifty years. See *ante* p. 68, § 71.

are hereby notified to appear at ——, on the —— day of ———, A. D. 18—, at — o'clock — m., and bring with you [*naming tools*] for the purpose of laboring —— successive days on the streets and alleys of said city of ———, as you shall then and there be directed by the superintendent of streets of said city, or that you pay into the treasury of said city, within three days after the service of this notice, the sum of —— dollars —— cents, as commutation for such labor.

C. D., City Superintendent of Streets.

SEC. 7. It shall be deemed sufficient service of the notice aforesaid if the same or a copy thereof shall be delivered to the person liable to perform such street labor, or if the same or a copy thereof be left at his usual place of abode with some member of his family above the age of ten years, first informing such member of such family of the contents thereof, or by leaving a copy thereof at his usual place of business with some clerk, agent or employee of the person sought to be notified. The return of the city superintendent of streets on the back of any such notice as to the manner of serving the same shall be *prima facie* evidence of the facts therein stated.

SEC. 8. Any person liable to perform street labor, who shall after due notice as aforesaid, fail or refuse to perform such street labor, or pay the money in lieu thereof, according to the provisions of this ordinance, shall be subject to a penalty equal to the amount of money demanded in such notice, to be recovered by suit as in other cases of penalties.

SEC. 9. No person shall be required to labor under section 5 of this ordinance, except a resolution of the city council shall be passed to that effect, requiring the labor to be done during the municipal year in which such resolution may be passed.

SEC. 10. The city superintendent of streets shall annually prepare a list of all persons residing in said city, subject to street labor, with the name of such persons alphabetically arranged. He shall submit such list for inspection to the city council, and the mayor shall thereupon appoint a committee of three aldermen, whose duty it shall be to carefully examine the correctness of such list, and if any names are omitted, cause the same to be added; when completed, said list shall be by said commtttee delivered to the city clerk, who shall make and certify a copy of the same, and deliver such copy to the city treasurer and the original list—he shall deliver to the city superintendent of streets—and it shall be the duty of such superintendent to execute duplicate receipts to the persons named on said list for labor performed or money paid in lieu of labor; and it shall be the duty of all persons to whom such receipts are executed, to file one of said receipts with the city treasurer; and no person shall be regarded as discharged from street labor for such municipal year until he shall have filed such duplicate receipt with the city treasurer.

SEC. 11. The city treasurer and city superintendent of streets shall each credit their respective lists aforesaid, opposite the name of each person to whom such receipt as aforesaid shall be given, as follows as the case may be: "Paid with labor;" "Paid with money." Said duplicate receipt shall be said treasurer's voucher for making such entry upon his list.

SEC. 12. At least two months before the end of each municipal year, the city treasurer shall certify to the city council, a list of all delinquents who are not credited on his said list as having "Paid with labor;" or "Paid with money," as aforesaid, and the city council shall direct the city attorney to commence suit against such delinquents, as said council shall determine are liable for street labor. Such suits should be instituted by

said attorney at a season of the calendar year thereafter best suited for street labor.

SEC. 13. The city superintendent of streets shall warn all persons aforesaid before January 1st of each year, and not thereafter. He shall before said date, warn, from time to time, the persons aforesaid liable to street labor, in such numbers only as he can best manage with advantage on the streets.

SEC. 14. The city superintendent of streets shall furnish a detailed specification of all labor or material to be let by contract by said city, and may bid to do such labor or furnish such material. But his bid shall not be accepted unless there is at least one other *bona fide* bid also made on such specification. He shall be allowed nothing per diem for superintending any labor or improvement let to him by the city council on contract. But a committee of three aldermen shall be appointed to see that the terms of any such contract are fully complied with.

SEC. 15. The city superintendent of streets shall be allowed compensation for his services as follows:

For superintending contract let to others	$ 50	per diem.
" time and labor actually and necessarily rendered the city	2 00	"
" making out and serving duplicate notices under section 6 and 7 hereof	10	each.
" executing duplicate receipts	5	"
" preparing list under section 10	5 00	"

Provided, That his per diem compensation shall never exceed two dollars per day, and shall be reported monthly to the city council for approval, modification or rejection, and the action of the city council shall be final in fixing the liability of said city to said city superintendent of streets.

SEC. 16. The city superintendent of streets shall, in an account book belonging to his office, keep a list of all tools and implements belonging to said city; a statement of materials and other property belonging to said city, and necessarily in his charge; an account showing the amount of cash received in lieu of street labor, and from whom; also, a statement of street labor rendered the city, and by whom. He shall enter in detail his compensation, as allowed monthly by the city council. He shall keep in said book a plain and accurate account of the amount of money expended on streets, alleys and sidewalks; and in said book show all receipts and expenditure pertaining to said office; said book shall be subject at all times to public inspection; and he shall deliver the same to his successor in office. He shall cause all implements belonging to the city to be legibly marked C. of —. [*initial letters for city*].

SEC. 17. The city superintendent of streets shall cause all ordinances in relation to the streets, alleys and sidewalks, to be enforced, and shall enter complaint for violation thereof. He shall obey all such orders, general or special, as he may receive from the city council, the committee on streets and alleys, or the mayor; and for any refusal or willful neglect to perform any duty required of him by any ordinance of said city, he shall be subject to removal from office.

SEC. 18. The city council shall, as soon as practicable after the commencement of each fiscal year, appropriate from the general fund an amount to be expended in improving and repairing the streets, sidewalks, and alleys, and the city treasurer shall immediately notify the mayor or city council when any such appropriation is exhausted, and, thereafter, no warrant shall be drawn against the same until the further order of the city council; and no new contract shall be let or improvements ordered,

except for such repairs of the streets and alleys as may be actually necessary.

SEC. 19. This ordinance shall be known as ordinance No. —.

Passed ———, 18—.

Approved ——— 18—.

Published ———, 18—.

A. B., Mayor.

{ L. S. } Attest.

C. D., City Clerk.

Form of ordinance defining and punishing misdemeanors.

ORDINANCE No. —.

AN ORDINANCE to define and provide for punishment of misdemeanors.

SECTION 1. *Be it ordained by the city council of* ———, That each of the following sections shall be deemed to state a misdemeanor or misdemeanors, which, if severally or jointly committed by any person or persons, or corporation, within the territorial jurisdiction of said city, shall subject the offender or offenders severally, to a penalty of not less than *three* dollars nor more than *two* hundred dollars:(1) *Provided*, That upon conviction, the offender may have such penalty imposed, abated by the city council, if in their judgment the same is excessive; and, provided further, that any act or omission forbidden by this ordinance, shall be deemed a misdeamor; but where more than one offence is stated in a section, the offender thereof shall be liable to only one penalty.(2)

SEC. 2. No person shall commit an assault, or assault and battery.(3)

SEC. 3. No person shall provoke a breach of the peace, or shall use any violent, threatening, profane or indecent language, to the disturbance of any person, or shall use any threatening, reproaching, or abusive language to, of or concerning any other person, tending to provoke a breach of the peace.(4)

SEC. 4. No person shall be drunk, nor shall be in a state of intoxication in any street, thoroughfare, or public place, or in any private house, or place, to the disturbance of any person.(5)

SEC. 5. No person shall be guilty of disorderly conduct, or shall make, aid, countenance, or assist in making, any improper noise, riot, disturbance, or breach of the peace.(6)

SEC. 6. No person shall be guilty of open lewdness, disorderly conduct, or act of public indecency, tending to debauch the public morals.(7)

SEC. 7. No person shall fire or discharge any cannon, gun, fowling

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(1) See *ante* p. 64, clause 96.

(2) See *ante* p. 66, § 66.

(3) See Rev. Stat., p. 355, § 20; *ante* p. 68, note 1.

The power to pass ordinances to punish parties who commit assaults and batteries is granted to cities and villages, under the general incorporation law. See *ante* p. 58, clause 72; p. 56, clause 59.

A prosecution for violation of a city ordinance is a civil proceeding, and where the offense is assault and battery it does not change the character of the proceeding. The town only acquires jurisdiction because the offense is prohibited by ordinance. *Graubner* v. *City of Jacksonville*, 50 Ill. R., 87; *Hoyer et al.* v. *Town of Mascoutah* 59 Ill. R., 137.

(4) See *ante* p. 56, clause 59.

(5) See *ante* p. 56, clause 59.

(6) See *ante* p. 58, clause 72.

(7) See *ante* p. 56, clause 59.

piece, pistol, or firearms of any description, or fire, explode, or set off any squib, crackers, or anything containing powder, or other explosive substances, on Sunday.(1)

SEC. 8. No person shall, by any menace, profane swearing, vulgar language, or any disorderly or unusual conduct, interrupt or disturb any assembly of people met for the worship of God.(2)

SEC. 9. No person shall willfully interrupt or disturb any school, or other assembly of people, met for a lawful purpose.(3)

SEC. 10. No person, for the purpose of bathing or otherwise, shall appear in any public place in a state of nudity, or in a dress not belonging to his or her sex, or in any indecent and lewd dress, or make any indecent exposure of his or her person.(4)

SEC. 11. No person shall exhibit, sell, or offer to sell, give away, or offer to give away, or have in his possession, with or without intent to sell or give away, any obscene and indecent book, pamphlet, paper, drawing, lithograph, engraving, picture, daguerreotype, photograph, steroscopic picture, model, cast, instrument or article of indecent or immoral use.(5)

SEC. 12. No person shall keep or maintain a house of ill-fame or assignation, or place for the practice of prostitution or lewdness. No person shall patronize or be an inmate of the same, nor let, own or be interested in any house, room or other premises for any such purpose, or shall keep a common, ill-governed, disorderly house, to the encouragement of idleness, gaming, drinking, fornication or other misbehavior.(6)

SEC. 13. No person shall instigate, cause or procure, or in any manner assist in any indecent exhibition of any animal, or shall exhibit or perform any indecent, immoral, or lewd play or show, or representation of any kind.(7)

SEC. 14. No person shall overload, overwork, cruelly beat, ill treat, torture, mutilate, or cruelly kill any animal, or cause, or knowingly allow the same to be done.(8)

SEC. 15. No person shall instigate, cause or procure any dog fight, prize-fight, cock-fight, nor any public or private fighting.(9)

SEC. 16. No person shall negligently or wilfully injure, destroy, or deface any bridge, crossing, sidewalk, lamp, lamp-post, or other property of said city.(10)

SEC. 17. No person shall play for money, or other valuable thing, at any game with cards, dice, checks or at billiards, or with any other article, instrument or thing whatever, which may be used for the purpose of playing or betting upon, or winning or losing money, or anything of value, nor shall bet on any game others may be playing.(11)

SEC. 18. No person shall keep a common gaming house, or in any building, place, booth, yard or garden, by him or his agent used and occupied, procure or permit any persons to frequent or to come together to play for money, or other valuable thing, at any game, nor shall keep or suffer to be kept any tables or other apparatus for the purpose of playing at any game or sport for money, or any valuable thing, nor shall keep or rent any such place for any such purpose.(12)

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(1) See *ante* p. 57, 58, clause 65, 72; Rev. Stat. p. 391, § 260.
(2) See *ante* p. 56, clause 59.
(3) See *ante* p. 56, clause 59.
(4) See *ante* p. 57, clause 66.
(5) See *ante* p. 52, clause 45.
(6) See *ante* p. 52, clause 45.
(7) See *ante* p. 51, clause 41.
(8) See *ante* p. 58, clause 73.
(9) See *ante* p. 56, clause 59.
(10) See *ante* p. 45, clause 15.
(11) See *ante* p. 52, clause 45.
(12) See *ante* p. 52, clause 45.

SEC. 19. No person shall keep, maintain, direct or manage, or aid in the keeping, maintaining, directing or managing of any lottery for the drawing or disposing of money or any other property or thing whatever.(1)

SEC. 20. No person shall vend, give away, or otherwise dispose of any lottery tickets.(2)

SEC. 21. No person shall manage, use or practice any trick, slight of hand, game or device whatever with the intent of winning or procuring the property or money of another person, by inducing him or her to bet, loan, deposit, or stake money or property upon the result of such trick or game.(3)

SEC. 22. No person shall knowingly suffer or permit any dangerous, unruly, fierce or mischievous animal, being the owner or keeper thereof. to run or be at large, to the danger, annoyance or damage of any other person.(4)

SEC. 23. No person shall at any place in said city, fly kites, throw stones, trundle hoops, play ball, or engage in any sport or exercise likely to frighten horses, injure passengers embarrass the passage of vehicles, or obstruct the business of other persons.(5)

SEC. 24. No person shall burn or set fire to any combustible matter, within one hundred feet of any shed, barn or building, without, posting at least two persons, over the age of fifteen years, to guard the same, until such fire is entirely extinguished.(6)

SEC. 25. No person shall allow any dead animal, being the owner or keeper thereof, to remain without being buried within the territorial jurisdiction of said city.(7)

SEC. 26. No person shall leave open, uncovered or unguarded, any cellar door, pit, vault or other subterraneous opening leading from, into or upon any street, alley, or sidewalk of said city.(8)

SEC. 27. No person, except peace officers, shall carry or wear, under his or her clothing, or concealed about his or her person, any pistol, revolver, slung-shot, knuckles, bowie knife, dirk knife, dirk, dagger, or any other dangerous or deadly weapon, without the written permission of the mayor of said city.(9)

SEC. 28. No person shall write, print or paint with chalk, ink, paint, or other material, any obscene words, language or expression, upon any building, tenement, fence, wall or other place, or draw, or paint on the same, any figure, picture or representation of anything of an immodest or vulgar character.(10)

SEC. 29. No person shall stick, paste, put up, or place, upon or against any building, tenement, fence, wall, lamp post, or other place, any hand bill, show bill, picture, or representation, unless by the consent of the owner or occupant of such building, tenement, fence, wall, lamp post, or place, nor shall it be lawful for any person in said city, to stick, paste, put up, or place, or cause to be stuck, posted, put up, or placed upon or against any building, tenement, fence, wall, or any public place, any gross, indecent or lewd written or printed advertisement, picture, hand bill or notice respecting such person's professional skill, or remedies for the cure of what are called, "Secret diseases."(11)

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(1) See *ante* p. 52, clause 45.
(2) See *ante* p. 52, clause 45.
(3) See *ante* p. 52, clause 45.
(4) See *ante* p. 61, clause 80.
(5) See *ante* p. 64, clause 92.
(6) See *ante* p. 57, clause 65.
(7) See *ante* p. 58, 60, clause 75, 78.
(8) See *ante* p. 45, clause 14; *ante* p. 60, note 1.
(9) See *ante* p. 57, clause 66.
(10) See *ante* p. 52, clause 45.
(11) See *ante* p. 46, 52, clause 17, 45.

SEC. 30. No person shall, with other persons, congregate about or upon any stairway, doorway, window, or in front of any business or dwelling house, theatre, lecture room, church, or elsewhere, and by so doing obstruct or interfere with the free passage of persons entering or occupying any such buildings or premises, or by his or her language, conversation or conduct, annoy, insult or disturb persons passing along the streets or alleys, or occupying, residing or doing business in any of said houses or places.(1)

SEC. 31. No person shall, at any time, within the corporate limits of said city, kill or attempt to trap, net, ensare, destroy or kill any robin, bluebird, swallow, martin, mosquito-hawk, whip-poor-will, cuckoo, wood pecker, cat-bird, brown thrasher, red-birds, hanging birds, sparrow wren, humming bird, dove, goldfinch, mocking bird, blue jay, finch, thrush, lark, cherry-bird, yellow-bird, oriole or bobolink; nor shall it be lawful to rob or destroy the nests of such birds, or of any or either of them.(2)

SEC. 32. No person shall, in said city, keep any dog, whelp, bitch, calf or other animal shut up or tied up in any yard, house or other place, which, by barking, howling, or by other noises, shall disturb the peace and quiet of any family, individual or neighborhood.(3)

SEC. 33. No person shall place, fasten or leave standing any horse, mare, gelding, ox, mule or ass on any paved or improved sidewalk in said city, or leave standing unfastened therein, any of the animals aforesaid, or any team of either, in harness or attached to any wagon, sled, carriage, dray, cart, or other vehicle, so that the same may be liable to run away; or cause, suffer or allow any of the same to pass through any street, alley or public place without a suitable driver, or ride or drive any of the aforesaid animals violently through or along any street, alley or public place in said city, so as to endanger the safety of any person, or to suffer any of the animals aforesaid to travel or run faster than an ordinary or moderate trot or pace, in, upon or over any street, alley or public place in said city; or stop any team in any street, lane, alley or other public way, in such a manner as to prevent other teams from passing at all times, except in case of absolute necessity; or stop any team at the regular crossings of streets so as to prevent free passage for foot passengers;(4) or fasten any such animals aforesaid in such a way that the animal, or vehicle, reins or lines attached to such animal shall obstruct the free use of the sidewalk.

SEC. 34. No person shall fasten any horse or other animal to any fence, railing or tree, or boxing around any tree, without the consent of the owner thereof, nor to any shade or ornamental tree, or the boxing or railing around the same, which may be standing or growing upon any street or sidewalk of said city. Nor shall any person cut, injure, bend or climb upon any shade or ornamental tree or boxing around the same, standing pon any street or sidewalk of said city.(5)

SEC. 35. No person shall incumber or obstruct any street, alley or side-

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(1) See *ante* p. 58, clause 72.

(2) See *ante* p. 58, clause 73.

(3) See *ante* p. 58, clause 72.

(4) See *ante* p. 43, 45, clause 10, 14, 21.

(5) See *ante* p. 42, clause 9.

A town having control of its streets, with power to improve them, may allow property holders to adorn the same by setting out shade trees along their premises, and by doing so will not lose its control over the trees so planted, and may protect the same as against such parties. *Baker* v. *Town of Normal*, 81 Ill. R., 108.

An ordinance prohibiting the hitching of any horses to shade trees in the streets, or to any shade trees or fence railing upon any street, or upon private premises, so far as it relates to trees in the public streets is not void, and the owner of the adjoining property is liable to the penalty if he hitches his horse to such tree. *Baker* v. *Town of Normal*, 81 Ill., R., 108.

walk with building materials, or any article or thing whatever, without first having obtained the written permission of the mayor, or city superintendent of streets; nor shall any person, except in case of urgent necessity and for a short time, incumber or obstruct more than one-third of any street or alley, or one-half of any sidewalk.(1)

SEC. 36. No person shall injure or tear up any pavement, side or crosswalk or any part thereof, or dig any hole, ditch or drain in, or dig or remove any sod, stone, earth, sand or gravel from any street, alley, or public ground of said city, without having first obtained the written permission of the mayor, or city superintendent of streets.(2)

SEC. 37. No person shall place or cause to be deposited on any street, alley, sidewalk or public square of said city, any manure, or filth, or any substance emitting an unwholesome or offensive smell, or any trash, old iron, brick bats, ashes, chunks of wood, old tin or tinware, old boots or shoes, rails, wood, brush, poles, straw, paper, shells, cans, swill or other rubbish, or leave standing in any street or alley of said city any wagon, buggy, sled or other vehicle, so as to obstruct or render inconvenient the passage of other persons through or along said street or alley: *Provided*, That no person shall be liable to suffer any penalty under this section who shall remove any such vehicle or rubbish aforesaid, within the first twenty-four hours after notice so to do from the city superintendent of streets, city marshal or mayor.(3)

SEC. 38. No person shall suffer the sidewalk in front of or adjoining the premises, owned or occupied by him or her, to become obstructed with snow, trash, dirt or weeds.(4)

SEC. 39. No person shall carry away or remove, or shall wilfully, maliciously or negligently break, deface, destroy or otherwise injure any monument, tombstone, tree, shrub, railing, fence or other property or article or thing belonging to any cemetery withing said city.(5)

SEC. 40. No person shall wilfully make a false alarm of fire by out-cry, or by using any bell or other sounding instrument; nor shall any person make any false alarm of any kind calculated to disturb the peace of said city.(6)

SEC. 41. No person shall sufier any animal belonging to him or her to wear a bell to the annoyance of any other person.(7)

SEC. 42. No person shall in any part of the city, fire or discharge any cannon, gun, pistol, or other fire arms, or shall set off, fire or explode any torpedo, fire cracker, fire ball, rocket or other fireworks whatever, or shall make or kindle any bonfire. But the discharge of fire arms, the setting off or exploding of fire works and the making of bonfires upon national holidays, and in the celebration of other public and general events, or the dischage of fire arms by the members of any military company when on parade, and in accordance with the command of the commanding officer, or by any city officer or other person in the discharge of any legal duty, or lawful act, when the same may be done in such a manner as not to endanger the safety of any person, or in the injury of any property, shall not be deemed a violation hereof.(8)

SEC. 43. No person shall indecently exhibit any stud horse or bull, or let any such horse to any mare or mares, or any such bull to any cow or

(1) See *ante* p. 46, clause 17.
(2) See *ante* p. 45, clause 15.
(3) See *ante* p. 45, clause 15.
(4) See *ante* p. 45, clause 14.
(5) See *ante* p. 60, clause 79.
(6) See *ante* p. 58, clause 72.
(7) See *ante* p. 58, clause 72.
(8) See *ante* p. 57, clause 65.

cows, within the limits of this city, unless in some inclosed place out of public view, said place to be first approved and passed upon by the city council, nor shall allow any such stud horse or bull to run at large, nor shall hitch or tie the same or either of them in public view to any tree, fence or hitching rack, within the limits of said city, or shall keep such stud horse inclosed in any lot, pen or other place, unless such lot, pen or other place is sufficiently inclosed to obstruct the public view.(1)

SEC. 44. No person shall throw or cast any stone or other missile upon or at any building, tree or other public or private property, or upon any person in any street, avenue, alley, lane, public place, or inclosed or uninclosed ground in said city, or shall aid or abet in the same.(2)

SEC. 45. No person shall, knowingly, sell or expose, or offer for sale, any sick or diseased animal, poultry or fish, to be used or eaten for food, or the flesh of any sick, diseased, or otherwise unwholesome dead animal, poultry or fish, or the flesh of any animal, fowl or fish, not usually used or deemed wholesome for food, or any other unsound or unwholesome provisions or article of food whatever, or any pernicious or adulterated milk, drink or liquors.(3)

SEC. 46. No person shall wilfully and maliciously tear down, mutilate and deface, or render illegible, any notice, hand-bill or poster lawfully posted up on any street, alley, avenue or other place in said city.(4)

SEC. 47. No person shall purposely change or remove any stake, post or stone placed or set to designate the corner or line of any lot or land, street or alley, or show the grade of any street, alley or sidewalk.(5)

SEC. 48. No person shall suspend any merchandise, or other article, or set up or cause to be set up, any sign, box or fixture, which shall extend over or upon any sidewalk more than eighteen inches from the building line, or inside of said sidewalk, unless such merchandise or other article, sign box or fixture be suspended at least eight feet above the sidewalk: *Provided*, That nothing herein shall be so construed as to prevent merchants or manufacturers from occupying with their wares, two feet of the inside of the sidewalk, nor prevent any person from occupying a greater space on the sidewalk when receiving or shipping goods.(6)

SEC. 49. No person shall falsely represent himself to be an officer of said city, or shall, without being duly authorized, exercise, or attempt to exercise any of the duties, functions or powers of a city officer; or shall hinder, obstruct, resist or otherwise interfere with an city officer in the discharge of his official duties, or attempt to prevent any such officer from arresting any person, or attempt to rescue from such officer any person in his custody.(7)

SEC. 50. No person shall refuse to aid in the arrest of any offender when ordered to do so by the city marshal, mayor, or any policeman of said city.(8)

SEC. 51. No person shall aid, abet or encourage the rescue or escape from prison of any person legally committed thereto, or shall supply, or attempt to supply, any such person with any weapon or intoxicating liquors, or with any implement or means of escape while in prison or in the legal custody of any officer of said city.(9)

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(1) See *ante* p. 57, clause 66.

(2) See *ante* p. 64, clause 92.

(3) See *ante* p. 56, clause 50.

(4) See *ante* p. 46, clause 17.

(5) See *ante* p. 40, clause 7.

(6) See *ante* p. 43, 46, clause 10, 17.

(7) See *ante* p. 57, 58, clause 66, 71.

(8) See *ante* p. 57, 58, clause 68, 71.

(9) See *ante* p. 57, clause 69.

SEC. 52. No person shall make or cause to be made any structure, enclosure, fence, cellar door, stairway or building encroaching in whole or in part upon any street, alley or sidewalk of said city.(1)

SEC. 53. To person, being the owner of any structure, enclosure, fence, cellar door, stairway or building, which encroaches upon any street, alley or sidewalk, shall fail to remove the same within thirty days after written notice so to do, made pursuant to a special resolution of the city council.(2)

SEC. 54. No person shall use any false scale, beam, weight or measure, in the purchase or sale of any article of property, knowing such weight or measure to be materially inaccurate and different from the standard prescribed by the laws of the State of Illinois, or rules of trade.(3)

SEC. 55. No person shall ride or drive upon any sidewalk of said city, any horse, mule, ass, or other animal, whether attached or not attached to any vehicle, in such a manner as to break or injure such sidewalk.(4)

SEC. 56. No person shall erect, or cause to be erected, in, on or around any park, public grounds or public square, or on any sidewalk, or in any alley or street of said city, in such a manner as to obstruct the light or view of any other person, or the free circulation of the air, any bulletin board, fence or structure upon which to post, or paste any show bill or advertisement of any kind, or for any other purpose whatsoever.(5)

SEC. 57. This ordinance shall be known as ordinance No. —.

Passed ———, 18—.

Approved ———, 18—

Published ———, 18—

A. B., Mayor.

{ L. S. } Attest:

C. D., City Clerk.

Form of ordinance defining boundaries and wards of city.

ORDINANCE NO. —.

AN ORDINANCE defining the boundaries of the city dividing the same into wards and providing for elections.

SECTION 1. *Be it ordained by the city council of* ————, That the corporate limits of said city are hereby declared to be as follows:

[*Here set forth the boundaries.*]

SEC. 2. That the corporate limits aforesaid of said city are hereby divided into three wards, as follows:(6) That portion north of the center of ——— street and east of the center of ——— street, shall constitute the first ward.

That portion north of the center of ——— street, and west of the center of ——— street, shall constitute the second ward; and

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(1) See *ante* p. 43, clause 10.

A municipal corporation has no power to authorize the owner of a lot to erect a stairway extending into a public street or alley. Such a structure is a purpresture, and is *per se* a nuisance. *Pettis* v. *Johnson*, Sup. Ct. Indiana, June 5, 1877; Monthly Jurist, 1877, p. 368.

(2) See *ante* p. 43, clause 10.

(3) See *ante* p. 56, clause 56.

(4) See *ante* p. 43, clause 10.

(5) See *ante* p. 46, clause 17,

(6) See *ante* p. 28, § 30; p. 33, § 51.

That portion south of a line running east and west, through the center of ——— street, across the entire corporate limits of said city, shall constitute the third ward; all persons residing in any house situate on said line shall be considered in the third ward.

SEC. 3. An alderman from each ward shall annually(1) (on the third Tuesday of April),(2) be elected for a term of two years; and on the third Tuesday of April, A. D. 18—,(3) and biennially thereafter, said city shall elect the following officers: A mayor, a city clerk, a city attorney, a city treasurer: *Provided*, No person shall be elected to the office of city treasurer for two terms in succession.

SEC. 4. The corporate limits of said city as hereby declared to be one election district.(4) No person shall be allowed to vote at any election who has not resided thirty days in said city, and is otherwise legally qualified to vote at any state election, according to the laws of Illinois.(5)

SEC. 5. It is hereby declared unlawful for any elector to vote for any person for the office of alderman of said city who does not reside in the same ward in which such elector resides, under penalty for each willful violation of this section of not less than fifty dollars or more than two hundred dollars.(6)

SEC. 6. The city council shall, within a reasonable time before any general or special election, appoint one judge of election and one clerk of election from each ward, each of whom shall receive as officers of such election the sum of two dollars per diem.(7)

SEC. 7. The judges appointed to act for any election, shall be provided by the city council with a separate ballot box for each ward of said city.(8) Said judges during the progress of any election shall keep in plain view of electors when voting each ballot box and the name of the ward pasted or painted thereon, to which such ballot box belongs. Said judges shall receive the ballot of each voter when presented, and deposit the same in the box bearing the name of the ward in which such voter claims to reside.

SEC. 8. There shall be provided a separate poll book for each clerk, ruled so as to provide three colums for numbers and three columns for names; said columns of names shall be headed respectively, "Names of voters of the first ward;" "Names of voters of the second ward," and "Names of voters of the third ward." The names of the voters, as well as the corresponding ballots of each voter of the several wards, shall be numbered separately, commencing with 1 (one) to number the voters and ballots of each ward. Each clerk shall write the name of each voter, whose ballot is received in the column of the poll book, provided for the names of the voters of the ward to which said voter belongs.

SEC. 9. At the close of each election the judges thereof shall proceed to count the votes of each ward separately, and publicly announce the result thereof, commenceing with the ballot box of the first ward and ending with the ballot box of the third ward, and shall string and seal up the

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(1) See *ante* p. 33, § 51.

(2) See *ante*, p. 32, § 48.

(3) See *ante* p. 19, § 14.

(4) See *ante* p. 35, § 56.

(5) All persons entitled to vote at any general election, for state officers, within any city or village, having resided therein thirty days next preceding thereto, may vote at any election for city or village officers. See *ante* p. 32, § 50.

(6) See *ante* p. 64, clause 96.

(7) See *ante* p. 35, 56; p. 76, § 86.

(8) The manner of conducting and voting at elections, held in cities and villages, and contesting elections, is required to be the same, as near as may be, as in case of elections under the general election law of the state. See *ante* p. 35, § 57.

ballots of each ward separately. Said judges shall designate in writing on each package of ballots, the number of the ward to which the same belongs. All of said ballots—a tally list—and one of said poll books shall be carefully enveloped and sealed up and put into the hands of one of said judges, who shall deliver the same to the city clerk of said city, within two days after the election, who shall deliver the same to the city council at their next meeting.(1)

SEC. 10. It is hereby declared the duty of the city council to meet at some reasonable hour, on the third day after any such election, and canvass the returns thereof; declare the result, and cause a statement thereof to be entered upon its journal. If the willful absence of any alderman shall prevent the meeting of a quorum of the city council, such alderman shall be subject to a fine of not less than fifty dollars or more than two hundred dollars.

SEC. 11. It shall be the duty of the city clerk, within five days after the result of such an election is declared, to notify all persons elected to office, that they are so elected, and unless thay qualify within ten days after such notice, the office to which they are elected will become vacant, according to the statutes of the State of Illinois.(2)

SEC. 12. Any newly elected alderman may, immediately upon being notified as aforesaid of his election, go before the city clerk of said city, and take and subscribe the oath of office required by the statute of the State of Illinois; and from thenceforth such alderman shall be entitled to his seat in the city council of said city. Said clerk shall file said oath in his office.

SEC. 13. On the fourth Tuesday of April of each year, at the usual hour and place of meeting of the city council, all newly elected and qualified aldermen shall meet with the members of the retiring council; and it shall be found (counting the aldermen whose terms of office have not expired, and such newly elected aldermen who have qualified) that there are at least four such aldermen present—such four or more aldermen shall proceed to organize a new city council, the mayor, or retiring mayor, or one of their own members, as temporary chairman, shall preside.

SEC. 14. The first duty of the city council, after its organization as aforesaid, shall be to pass upon the sufficiency of the official bonds of the newly elected city officers, commencing with the official bond of the newly elected mayor; and if in their judgment the bond of such mayor is good and sufficient, they shall cause their approval of the same to be entered upon the journal of said council; and thereupon, the retiring mayor, or city clerk, or other competent person, shall administer the oath of office to such mayor, who shall subscribe and file the same with the city clerk and immediately enter upon the duties of his office. In like manner, al city officers, except aldermen, shall give bond and take the oath of office, within the time prescribed by the statutes of Illinois; but they shall not enter upon the duties of their office, until the first day of May next, after the regular municipal election: *Provided*, That any officer elected or appointed shall enter, as soon as qualified, immediately upon the duties of his office, when there is a vacancy.

SEC. 15. All officers of said city, except the mayor and the aldermen shall be commissioned according to the provisions of section 76, chapter 24, Revised Statutes (1874) of Illinois. All such commissions shall be made to expire annually or biennially thereafter, as the case may be, on the first day of May.

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(1) See *ante* p. 35, § 57.

(2) See *ante* p. 35, § 59.

SEC. 16. All city elections shall be holden at [*state the place of holding elections*], in said city, unless some other place shall be designated by the city council, in the notice given of such election.(1)

SEC. 17. The city clerk shall give at least twenty days notice of the time, place of election, and officers to be elected, or matter or thing to be voted on, of all city elections, according to section 56, chapter 24, Revised Statutes (1874) of Illinois.

SEC. 18. The qualification of electors, the manner of conducting elections, the tenure and qualification of all city officers, shall be the same as prescribed by the statutes of the State of Illinois, subject only to such modifications as are provided in the ordinances of said city.(2)

SEC. 19. The municipal year of said city, shall be construed to begin on the first day of May, of one calender year, and end the first day of May, the succeeding calender year.(3) The commissions of the several city officers, whether elected or appointed, shall be worded to expire on said day. All licenses or contracts made to expire with the municipal year, shall end on said day. The wages and salaries of employees and officers of said city, shall be reckoned by the calendar month from May first of one year, to May first the succeeding year.

SEC. 20. This ordinance shall be known as ordinance No. —.

Passed ———, 18—.

Approved ———, 18—.

Published ———, 18—.

A. B., Mayor.

{ L. S. } Attest:

C. D., City Clerk.

Form of ordinance concerning city officers.

ORDINANCE NO. —.

AN ORDINANCE concerning city officers.

SECTION 1. *Be it ordained by the city council of* ————, That the officers of said city shall be, (in addition to the mayor and city council) as follows: A city clerk, city treasurer, city attorney, city superintendent of streets, city marshal,(4) and one police magistrate.(5) Policemen(6) and other officers may be appointed by the mayor, by and with the advice and consent of a majority vote of all the aldermen authorized by law to be elected. Such vote to be taken by the yeas and nays and entered of record.(7)

SEC. 2. All officers of said city, whether elected or appointed, shall, before entering upon the duties of their respective offices, take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States, and the Constitution of the State of Illinois, and that I will faithfully discharge the duties of the office of ———, according to the best of my ability."

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(1) See *ante* p. 35, § 56.

(2) See *ante* p. 35, § 57.

(3) See *ante* p. 111, § 176.

(4) See *ante* p. 69, § 72.

(5) See *ante*, p. 115, § 192; Laws 1875, p. 91; HAINES TREATISE, new ed., p. 967.

(6) See *ante*, p. 70, § 73.

(7) See *ante* p. 134 (Mayor's Act.)

Which oath or affirmation shall be filed in the office of the clerk; and all such officers, except aldermen, shall, before entering upon the duties of their respective offices, execute a bond with security to be approved by the city council, in such penal sum hereinafterwards provided; conditioned for the faithful performance of the duties of his office, and the payment of all moneys received by such officer according to law, and the ordinances of said city: *Provided, however*, that in no case shall the mayor's bond be fixed at a less sum than three thousand dollars ($3,000); nor shall the treasurer's bond be fixed at a less sum than the amount of the estimated tax and special assessments for the current year—which bonds shall be filed with the clerk (except the bond of the clerk, which shall be filed with the treasurer);(1) *Provided, further*, that the official bond of the city clerk, city attorney, city marshal, and city superintendent of streets, is hereby fixed at one thousand dollars; and the bond of each policemen and other appointee of said city, at five hundred dollars.(2)

SEC. 3. No person shall be eligible to any office who is not a qualified elector of the city, and who shall not have resided therein at least one year next preceeding his election or appointment, nor shall any person be eligible to any office who is a defaulter to the corporation.(3)

SEC. 4. No officer shall be directly or indirectly interested in any contract, work or business of said city, or the sale of any article, the expense, price or consideration of which is paid from the treasury, or by any assessment levied by any act or ordinance; nor in the purchase of any real estate or other property belonging to the corporation, or which shall be sold for taxes or assessments, or by virtue of legal process at the suit of said corporation.(4)

SEC. 5. No mayor, alderman, city clerk, or treasurer, shall hold any other office under the city government during his term of office.(5)

SEC. 6. The mayor, aldermen, city marshal and all policemen and watchmen of said city, shall be conservators of the peace; and as such,

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(1) See *ante*, p. 71, § 75. Where the term of office of an officer is fixed by law at two years, and the record shows that the office was filled by appointment at the time when, by law, the term would expire, it is conclusive that the appointment was for two years from that date, and the sureties on the bond of the officer so appointed will be liable for his acts during the full term of two years from the date of his appointment. *Ladd et al.* v. *Board of Trustees, etc.*, 80 Ill. R., 233.

When after a person had been elected county treasurer and given bond, and a subsequent special act of the legislature authorized the county authorities to levy a tax for the erection of an alms house, and they did so *Held*, such action did not impose such additional liability as would release the sureties on the treasurer's bond. They will be presumed to have become sureties, knowing such acts could and might be done during the official term of the treasurer. Such sureties are liable for the faithful performance of duties, whether imposed previous or subsequent to the execution of the bond, if within the scope of his official duties. *Smith* v. *Peoria County*, 59 Ill. R., 412.

Where a town officer was elected his own successor, and gave a new bond, *Held*, that the sureties were liable on such bond for any amount which appeared to have been in the hands of such town officer belonging to the town, at the end of the preceding official term. *Morley* v. *The Town of Metamora*, 78 Ill. R., 394.

Failure by a township collector to give bond after receiving an official bond with the proper amount for to execute and obtain securities on; *Held*, this was a sufficient notice of the amount of taxes to be collected by him, and that it was his duty to have executed and presented for approval to the proper authority his bond, within eight days thereafter, and his failure to do so was properly deemed a refusal to serve and the town board were justified in refusing such bond when afterwards presented, and in appointing another person to the office. *Ross* v. *The People ex rel Johnson*, 78 Ill. R., 375.

(2) Additional surety or new bond may be required of all public officers. See Rev. Stat., p. 728, § 1. And sureties may in certain cases be released. See Rev. Stat., p. 729, § 10.

(3) See *ante* p. 72, § 77.

(4) See *ante* p. 73, § 78.

(5) See *ante* p. 74, § 80.

shall exercise the power conferred on them under section 83, of chapter 24, Revised Statutes, 1874, of Illinois.

SEC. 7. Any constable or sheriff of ——— county, Illinois, may serve any process, or make any arrest, authorized to be made by any city officer.(1)

SEC. 8. The mayor and city clerk shall administer oaths and affirmations upon all lawful occasions.(2)

SEC. 9. The fees, salary or compensation of no city officers, who is elected or appointed for a definite term, shall be increased or diminished during such term.(3)

SEC. 10. As a full compensation for the discharge of the duties of their respective offices, as the same are or may be defined by law or by any ordinance of said city now or hereafter in force, the hereinafter named officers shall be paid as follows—that is to say:

Each alderman shall receive three dollars for each meeting of the city council;(4) *Provided*, the compensation of no alderman shall exceed forty-eight dollars per annum; and no other compensation than for attendance upon such meetings shall be allowed to any alderman.	$4 per month.
The mayor shall receive five dollars for each meeting of the city council, and no other compensation than for attendance upon such meetings:(5) *Provided*, the compensation of mayor shall not exceed seventy-two dollars per annum.	$6 per month.
The city clerk and city treasurer shall each receive a salary of seventy-two dollars per annum, and such fees as may be allowed either of them, under the laws of Illinois, or ordinances of said city.	$6 per month.
The city attorney shal receive a salary of one hundred and twenty dollars per annum.	$10 per month.
The city marshal shall receive a salary of five hundred and forty dollars per annum, and such fees as are or may be allowed under the laws of Illinois, or ordinances of said city.	$45 per month.
Each night watch or city policeman shall receive four hundred and eighty dollars per annum, and such fees as are or may be allowed under the laws of Illinois, or ordinances of said city.	$40 per month.

The city superintendent of streets shall receive in full compensation for his services the fees allowed him in section 15, of ordinance No. 7, and such other fees as are or may be allowed under the ordinances of said city.

All salaries shall be paid in equal monthly payments, at the rate per annum aforesaid, for the period only such officers shall hold their respective offices. This section shall not apply to any officer of said city now in office, until after the expiration of his present term of office;(6) and the city shall not be liable for any of the fees aforesaid, unless the same are expressly made payble out of the city treasury.

SEC. 11. In case the mayor, or any other municipal officer, shall at any time be guilty of a palpable omission of duty, or shall willfully and cor-

(1) See *ante* p. 68, § 70.

(2) See *ante* p. 76, § 87.

(3) See *ante* p. 81, note 1; Const. 1870, art. 9, § 11.

(4) See *ante* p. 76, § 85.

(5) See *ante* p. 76, § 86.

(6) Salary, fees or compensation cannot be increased or diminished during term of office. See *ante* p. 76, § 86.

ruptly be guilty of oppression, malconduct or misfeasance in the discharge of the duties of his office, he shall be liable to indictment in any court of competent jurisdiction, and, on conviction, shall be fined in a sum not exceeding one thousand dollars; and the court in which such conviction shall be had, shall enter an order removing such officer from office.(1)

SEC. 12. The city council of said city shall consist of the mayor and aldermen.(2)

SEC. 13. The aldermen shall hold their term of office for two years, and until their successors are elected and qualified.(3)

SEC. 14. If any vacancy shall occur in the office of alderman, by death, resignation, removal or otherwise, such vacancy shall be filled by election.(4)

SEC. 15. No person shall be eligible to the office of alderman unless he shall be a qualified elector, and reside within the ward for which he is elected, nor shall he be eligible if he is in arrears in the payment of any tax or other liability due said city; nor shall he be directly or indirectly interested in any contract whatever, to which said city is a party; nor shall he be eligible if he shall have been convicted of malfeasance, bribery or other corrupt practice or crimes; nor shall he be eligible to any office, the salary of which is payable out of the city treasury, if at the time of his appointment he shall be a member of the city council; nor shall any member of the city council at the same time hold any other office under the city government: nor shall he be either directly or indirectly, individually or as member of a firm, engaged in any business transaction, other than official, with such city, through its mayor or any of its authorized boards, agents or attorneys, whereby any money is to be paid, directly or indirectly, out of the city treasury, to such member or firms.(5)

SEC. 16. The city council shall be judge of the election and qualification of its own members.(6)

SEC. 17. The city council shall determine its own rules of proceedings, punish its members for disorderly conduct, and with the concurrence of two-thirds of the aldermen, may expel a member, but not a second time for the same offense; provided that any alderman or councilman who shall have been convicted of bribery shall thereby be deemed to have vacated his office.(7)

SEC. 18. A majority of aldermen elect shall constitute a quorum to do business,(8) but a smaller number may adjourn from time to time and compel absentees to attend any regular or special meeting by a written citation to that effect, stating the day and hour of such meeting. Such citation to be signed by the mayor or aldermen issuing the same, and may be served by the city marshal, or any officer authorized to serve processes in said city, by reading the same to such absentee. Any alderman willfully refusing to obey such citation, shall forfeit ten dollars, to be deducted out of his salary, and upon the repeated refusal to obey such citation, such alderman may be expelled and his office declared vacant.

SEC. 19. The city council shall, within the first quarter of each fiscal year, pass an ordinance, to be termed the annual appropriation bill, in which such corporate authorities may appropriate such sum or sums of money as may be deemed necessary to defray all necessary expenses and

(1) See *ante* p. 27, § 27.
(2) See *ante* p. 28, § 29.
(3) See *ante* p. 28, § 31.
(4) See *ante* p. 28, § 32.
(5) See *ante* p. 28, § 33.
(6) See *ante* p. 29, § 34.
7) See *ante* p. 29, § 35.
(8) See *ante* p. 29, § 36.

liabilities of such corporation; and in such ordinance shall specify the objects and purposes for which such appropriations are made, and the amount appropriated for each object or purpose. No further appropriations shall be made at any other time within such fiscal year, unless the proposition to make each appropriation has been first sanctioned by a majority of the legal voters of such city or village, either by a petition signed by them, or at a general or special election duly called therefor.(1)

SEC. 20. Neither the city council, nor any department or officer of the corporation, shall add to the corporation expenditures in any one year, anything over and above the amount provided for in the annual appropriation bill of that year, except as is herein otherwise specially provided; and no expenditure for an improvement to be paid for out of the general fund of the corporation shall exceed, in any one year, the amount provided for such improvement in the annual appropriation bill: *Provided, however*, that nothing herein contained shall prevent the city council from ordering, by a two-thirds vote, any improvement, the necessity of which is caused by any casualty or accident happening after such annual appropriation is made. The city council may, by a like vote, order the mayor or finance committee to borrow a sufficient amount to provide for the expense necessary to be incurred in making any improvements, the necessity of which has arisen as is last above mentioned, for a space of time not exceeding the close of the next fiscal year; which sum, and the interest, shall be added to the amount authorized to be raised in the next general tax levy, and embraced therein. Should any judgment be obtained against the corporation, the mayor, or finance committee, under the sanction of the city council may borrow a sufficient amount to pay the same, for a space of time not exceeding the close of the next fiscal year; which sum and interest shall, in like manner, be added to the amount authorized to be raised in the general tax levy of the next year, and embraced therein.(2)

SEC, 21. No contract shall be hereafter made by the city council, or any committee or member thereof; and no expense shall be incurred by any of the officers or departments of the corporation, whether the object of the expenditure shall have been ordered by the city council or not, unless an appropriation shall have been previously made concerning such expense, except as expressly provided by the statutes of Illinois.(3)

SEC. 22. The yeas and nays shall be taken upon the passage of all ordinances, and on all propositions to create or appropriate and of its money, and in all other cases at the request of any member, which shall be entered on the journal of its proceedings; and the concurrence of a majority of all the members elected in the council, shall be necessary to the passage of any such ordinance or proposition; provided, it shall require two-thirds of all the aldermen elect, to sell any city or school property.(4)

SEC. 23. No vote of the city council shall be reconsidered or rescinded at a special meeting, unless there be present as large a number of aldermen as were present when such vote was taken.(5)

SEC. 24. All ordinances passed by the city council shall, before they take effect, be deposited in the office of the city clerk; and if the mayor approves thereof, he shall sign the same, and such as he shall not approve he shall return to the council, with his objections thereto, in writing, at the next regular meeting of the council occurring not less than five days

(1) See *ante* p. 77, § 89.

(2) See *ante* p. 78, § 90.

(3) See *ante* p. 79, § 91.

(4) See *ante* p. 30, § 41.

(5) See *ante* p. 30, § 42.

after the passage thereof. Such veto may extend to any one or more items or appropriations contained in any ordinance making an appropriation, or to the entire ordinance; and in case the veto only extends to a part of such ordinance, the residue thereof shall take effect and be in force. But in case the mayor shall fail to return any ordinance, with his objections thereto, by the time aforesaid, he shall be deemed to have approved such ordinance, and the same shall take effect accordingly.(1)

SEC. 25. Upon the return of any ordinance by the mayor, the vote by which the same was passed shall be reconsidered by the council; and if, after such reconsideration, two-thirds of all the members elected to the city council shall agree, by yeas and nays, to pass the same, it shall go into effect, notwithstanding the mayor may refuse to approve thereof. The vote to pass the same over the Mayor's veto shall be taken by yeas and nays, and entered on the journal.(2)

SEC. 26. The city council of said city shall style all ordinances thereof as follows: "Be it ordained by the city council of ———."(3)

SEC. 27. The city council shall cause all ordinances of said city, which imposes any fine, penalty, imprisonment or forfeiture, or makes any appropriation to be published within one month after they are passed; and no such ordinance shall take effect until ten days after its publication. But all other ordinances, orders and resolutions shall take effect from and after their passage, unless otherwise provided therein.(4)

SEC. 28. All ordinances making appropriations, as well as all other ordinances imposing no fine, penalty, imprisonment, or forfeiture, may be entitled of the subject or subjects embraced in the same and section —, of ordinance No. —, so far as provides for the numbering of all ordinances, shall not be construed to embrace any such ordinances.

SEC. 29. The city council shall cause all ordinances requiring publication, under section 27, to be published at least once in some newspaper, published in said city, or otherwise, in book or pamphlet form.(5)

SEC. 30. All ordinances, and the date of publication thereof, may be proven by the certificate of the clerk, under the seal of the corporation. And when printed in book or pamphlet form, and purporting to be published by authority of the city council, the same need not be otherwise published; and such book or pamphlet shall be received as evidence of the passage and legal publication of such ordinances, as of the dates mentioned in such book or pamphlet, in all courts and places, without further proof.(6)

SEC. 31. The city council shall hold a regular monthly meeting on the first Tuesday of each month, in a public room in said city, to be known as the council room.(7) Such regular meeting shall not be holden at any other time or place without a public notice to that effect made pursuant to a special resolution of said council. All special meetings shall be holden at such council room, unless some other place is agreed upon in said city. But the city council shall hold no meeting at any other place than the regular council room, without causing public out-cry to be made that the city council is in session at such place. The city council shall sit at all

(1) See *ante* p. 31, § 46; p. 135, § 247.

(2) Laws 1875, p. 41; *ante* p. 31, ¿ 47.

(3) See *ante* p. 65, § 63.

(4) See *ante* p. 65, ¿ 64.

(5) See *ante*, p 65, ¿ 64.

(6) See *ante* p. 65, ¿ 65; Rev. Stat., p. 490, ¿ 14.

Ordinances published in book or pamphlet form, purporting to be published by authority of the board of trustees or city council, no other fact need be shown, nor need the fact of their passage to be proved to admit them in evidence. *Byars* v. *City of Mt. Vernon*, 77 Ill., R. 467; See *ante* p. 65, ¿ 65.

(7) See *ante* p. 30, ¿ 39.

times with open doors, and shall keep a journal of its proceedings, and may elect a temporary chairman in the absence of the mayor.(1) The mayor, or any three aldermen, may call special meetings of the city council.(2)

SEC. 32. The city council shall exercise the power and jurisdiction conferred on them by the statutes of Illinois, within the corporate limits of said city; and also one-half mile beyond the limits of said city, for the purpose of enforcing health and quarantine regulations and ordinances(3). But the city shall not be held liable for any damage accruing to any person under any void ordinance.(4)

THE MAYOR.

SEC. 33. The mayor shall be a citizen of the United States, a qualified elector, reside within the city limits, and hold his office for two years, and until his successor is elected and qualified.(5)

SEC. 34. Whenever a vacancy shall happen in the office of the mayor, when the unexpired term shall be one year or over from the date when the vacancy occurs, it shall be filled by an election.(6) If the vacancy is less than one year, the city council shall elect one of its number to act as mayor, who shall possess all the rights and powers of the mayor, until the next annual election, and until his successor is elected and qualified.(7) If the mayor, at any time during the term of his office, shall remove from the limits of the city, his office shall thereby become vacant.(8)

SEC. 35. During a temporary absence or disability of the mayor, the city council shall elect one of its number to act as mayor *pro tem*,(9) who during such absence or disability shall possess the powers of mayor.

SEC. 36. The mayor shall preside at all meetings of the city council, but shall not vote except in case of a tie, when he shall give the casting vote.(10)

SEC. 37. The mayor shall have power to remove any officer appointed by him, on any former charge, whenever he shall be of the opinion that the interests of the city demand such removal; but he shall report the reasons for such removal to the council at its next regular meeting.(11)

SEC. 38. He may exercise, within the city limits, the powers conferred upon sheriffs, to suppress disorder and keep the peace.(12)

SEC. 39. He may release any person imprisoned for violation of any city ordinance, and shall report such release, with the cause thereof, to the council at its first session thereafter.(13)

SEC. 40. He shall perform all such duties as are or may be prescribed by law or by the city ordinances, and shall take care that the laws and ordinances are faithfully executed.(14)

SEC. 41. He shall have power at all times to examine and inspect the books, records and papers of any agent, employee or officer of the city.(15)

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(1) See *ante* p. 30, § 38.
(2) See *ante* p. 31, § 45.
(3) See *ante* p. 31, § 44.
(4) See *ante* p. 58, note 1.
(5) See *ante* p. 25, § 14.
(6) See *ante* p. 25, § 15.
(7) See *ante* p. 26, § 16.
(8) See *ante* p. 26, § 18.
(9) See *ante* p. 26, § 17.
(10) See *ante* p. 26, § 19.
(11) See *ante* p. 26, § 20.
(12) See *ante* p. 26, § 21.
(13) See *ante* p. 26, § 22.
(14) See *ante* p. 27, § 23.
(15) See *ante* p. 27, § 24.

SEC. 42. The mayor shall, annually, and from time to time, give the council information relative to the affairs of the city, and shall recommend for their consideration such measures as he may deem expedient.(1)

SEC. 43. He shall have power, when necessary, to call on every male inhabitant of the city, over the age of eighteen years, to aid in enforcing the laws and ordinances, and to call out the militia to aid in suppressing riots and other disorderly conduct, or carrying into effect any law or ordinance, subject to the authority of the governor, as commander-in-chief of the militia.(2)

CITY CLERK.

SEC. 44. That the clerk shall attend at every meeting of the city council, and shall keep a correct record of all proceedings of the city council,(3) and safely keep the corporate seal, and use it in all cases where necessary, whenever applied to for that purpose; he shall notify all committees appointed by said council of their appointment, and of the business referred to them; he shall notify all judges of elections of their appointment; he shall prepare orders for special elections; he shall prepare bonds or scrips for loans, and perform all other duties which, by usage and custom, devolve upon clerks and secretaries of incorporated bodies; and to facilitate the discharge of his duties, he may and is hereby authorized to procure for said city such blank forms as may be necessary for the above purpose.

SEC. 45. That the said clerk shall keep all the records, papers, ordinances, votes, and proceedings of the city council, and of the city of——— during the recess of the city council, and all returns of assessments and of elections of city officers, and shall record in a book all ordinances of said city, and all appointments of officers for the city, and have all of the ordinances published immediately after their passage, and shall not suffer any records or paper, or other instrument of writing, to be taken out of his office by any other person than himself, the mayor, the city attorney, or a committee appointed by the city council to examine accounts, under the penalty of five dollars, and a further forfeiture of the amount of all damages that may accrue by the loss or obliteration of any records or papers of the city; and should any be lost or obliterated, and should the mayor, city attorney or any committee of examination as aforesaid, suffer any paper or record or paper entrusted to him or them, he or they shall be responsible for the damage that may accrue by reason of such loss or obliteration.

SEC. 46. That the said clerk shall keep a regular account of debtor and creditor between the city and the city treasurer, by charging him with all sums received by him as exhibited in his duplicate receipts, and credit him with all city orders paid and returned to him, and also keep a regular account of debtor and creditor when appropriations are made and expenditures ordered; and shall state in all orders drawn on the city treasurer, for whom, and when the same is payable; and also to what fund or appropriation the same is chargable.(4)

SEC. 47. That the said clerk shall index all ordinances by their number or title, and attend to the proper and lawful publication of same, and shall keep a list of all committees appointed by said council and of the business respectively, from time to time referred to them, and note when the committees report, the date and nature of their report. That the said clerk shall attest all deeds, contracts and leases made by the council, and, in

(1) See *ante* p. 27, § 25.

(2) See *ante* p. 27, § 26.

(3) See *ante* p. 74, § 81.

(4) See *ante* p. 80, § 98.

conjunction with the mayor, sign all ordinances, bonds, licenses and orders on the city treasurer and affix the seal of the city thereto, and perform such other duties as may be required by the council.

SEC. 48. The city clerk shall exercise a general supervision over all the officers of the corporation charged in any manner with the receipt, collection or disbursement of corporation revenues, and the collection and return of all such revenues into the treasury. He shall have the charge, custody and control of all deeds, leases, warrants, vouchers, books and papers of any kind, the custody and control of which is not herein given to any other officers; and he shall, on or before the fifteenth day of May, in each year, and before the annual appropriation to be made by the city council, submit to the city council a report of his estimates, as nearly as may be, of moneys necessary to defray the expenses of the corporation during the current fiscal year. He shall, in said report, class the different objects and branches of expenditures, giving, as nearly as may be, the amount required for each; and for the purpose of making such report, he is authorized to require of all officers their statement of the condition and expenses of their respective offices or departments, with any proposed improvements and the probable expense thereof, all contracts made and unfinished, and the amount of any and all unexpended appropriations of the preceding year. He shall, in such report, show the aggregate income of the preceding fiscal year, from all sources, the amount of liabilities outstanding upon which interest is to be paid, the bonds and debts payable during the year, when due and when payable; and in such report he shall give such other information to the council as he may deem necessary, to the end that the city council may fully understand the money exigencies and demands upon the corporation for the current year.(1)

SEC. 49. The city clerk shall procure a large scrap book, in which he shall paste all ordinances passed by the city council, and when such ordinance has been printed in a newspaper, shall attach the certificate of the publisher thereto.(2) At the end of each ordinance the clerk shall state concerning the same when passed; when approved, and when published. (3) Said scrap-book shall be and is hereby declared to be the city record of ordinances.

CITY TREASURER.

SEC. 50. The city treasurer shall receive all moneys belonging to said city, and shall keep his books and accounts in such a manner as to exhibit at all times the true financial condition of the corporation, and such books and accounts shall always be subject to the inspection of any member of the city council.(4)

SEC. 51. The city treasurer shall keep a separate account of each fund or appropriation, and the debits and credits belonging thereto, and shall particularly exhibit the following accounts:(5) Street labor account; salary account; sidewalk account; street and alley account; fine and forfeiture account; dog tax account; bonded and special debts account; license account; lamps and light account; printing, rent and fuel account; and miscellaneous accounts.

SEC. 52. The city treasurer shall give every person paying money into the treasury duplicate receipts therefor.(6) One to be filed with the city

(1) *ante* p. 82, § 104.

(2) The ordinances of a town printed and pasted in their record book of proceedings of the board of trustees, are admissible in evidence; that being a sufficient recording under the statute. *Ewbanks* v. *The President and Trustees of Town of Ashley;* 36 Ill., R. 177.

(3) See *ante* p. 74, § 82.

(4) See *ante* p. 79, § 92.

(5) See *ante* p. 79, § 93.

(6) See *ante* p. 79, § 94.

clerk by such person; but in the event of the failure of such person to file such duplicate receipt with the clerk, it shall be the duty of the city treasurer to file a copy of such receipts with the clerk at the time of rendering his monthly report.

SEC. 53. The city treasurer shall, at each regular monthly meeting of the city council, render an account, under oath, showing the state of the treasury at the date of such account and the balance of money in the treasury and unexpended belonging to the several appropriations. He shall also accompany such accounts with a statement of all moneys received into the treasury, and on what account, together with all warrants redeemed and paid by him; which said warrants, with any and all vouchers held by him, shall be delivered to the clerk, and filed with his said account in the clerk's office, upon the day of such settlement. He shall return all warrants paid by him stamped or marked "paid." He shall keep a register of all warrants redeemed and paid, which shall describe such warrants, and show the date, amount, number, the fund from which paid, the name of the person to whom and when paid.(1)

SEC. 54. The city treasurer is hereby directed to keep all moneys belonging to said city, and that now is or may come into his hands, separate and distinct from his own moneys; and he is hereby prohibited from using either directly or indirectly, the corporation money or warrants in his custody and keeping, for his own use and benefit, or that of any other person or persons whomsoever; and any violation of this provision shall subject him to immediate removal from office by said city council; and in which case his successor shall be appointed, who shall hold his office for the remainder of the term unexpired of such officer so removed.(2)

SEC. 55. The fiscal year of said city shall be construed to begin on the first day of April of one calendar year, and end the first day of April the succeeding calendar year; and all the appropriations deemed necessary to defray the expenses and liabilities of said city, shall be construed to meet the expenses and liabilities of said city during the fiscal year as herein defined.(3)

SEC. 56. The city treasurer shall annually, between the first and tenth of April, make out and file with the city clerk, a full and detailed account of all the receipts and expenditures of said city, and of all his transactions as such treasurer during the preceding fiscal year, which statement shall exhibit, under separate and appropriate headings, the several accounts required to be kept in section 51 of this ordinance. It shall be the duty of the city clerk to submit his counter financial report, together with the annual report of the treasurer aforesaid to the financial committee of the city council; and if said committee shall be satisfied that said treasurer's report properly exhibits the true financial condition of said city, they shall return the same to the city clerk, who shall cause such report of the treasurer to be published in some newspaper printed in said city; *Provided*, if the cost of such publication shall exceed ten dollars, that the city clerk shall in lieu of such publication, post up the same in some public place in his office.(4)

SEC. 57. In the adjustment of the accounts of the treasurer with the clerk, there shall be an appeal to the finance committee of the council, whose decision in all matters of controversy arising between said officers shall be binding, unless the city council shall otherwise direct and provide.(5)

(1) See *ante* p. 79, § 95.
(2) See *ante* p. 80, § 96.
(3) See *ante* p. 77, § 88.
(4) See *ante* p. 80, § 97.
(5) See *ante* p. 83, § 108.

SEC. 58. All warrants drawn upon the treasurer must be signed by the mayor, and countersigned by the clerk, stating the particular fund or appropriation to which the same is chargable, and the person to whom payable; and no money shall be otherwise paid than upon such warrants so drawn, except as otherwise expressly provided.

SEC. 59. All moneys received on any special tax or assessment shall be held by the treasurer as a special fund, to be applied to the payment of the improvement or indebtedness for which such assessment or tax was made, and said money shall be used for no other purpose whatever, unless to reimburse such corporation for money expended for such improvement, or in the liquidation of such indebtedness.(1)

CITY ATTORNEY.

SEC. 60. The city attorney shall be a licensed attorney in the courts of the state, and shall prosecute or defend in behalf of the city, (when the services of any attorney are necessary), in all cases in which the interest of the city or the official acts of any officer or agent of the city are involved. He shall, when required, advise the city council, or any of its committees, or any city officers, in relation to all matters of law arising in which the interests of the city are in question. He shall examine all assessments and tax lists, or other papers, in relation to the assessment or collection of taxes or assessments, and approve the same, or draft any ordinance, bond, contract, or instrument of writing, on behalf of the city, or examine and approve the same, when required by the city council or any of its committees or the mayor.

SEC. 61. The city attorney, when his services are necessary, shall prosecute any suit brought in the name of the city, before any police or other magistrate, for the recovery of any penalty or otherwise. He shall cause executions to issue upon all judgments recovered in favor of the city, and cause the city marshal to attend to their prompt collection. He shall report to the city council or the mayor all cases in which he shall deem it expedient to take an appeal or writ of error on behalf of the city, and the mayor shall enter into such bonds or other obligation on the part of the city under the corporate seal, and with such sureties as may be necessary to perfect such appeal, and such sureties shall be indemnified by the city from all loss or damage. He shall attend all regular meetings of the city council; and, on request, all special meetings of the same. The city clerk shall deliver to him any bond or other paper necessary to be used in any suit or other proceedings, taking his receipt for the same.

SEC. 62. He shall report to the city council without delay after the adjournment of each term of any court of record, and at such other times as he may be required, the state or disposition of all cases of the city pending in such court. He shall examine all fee-bills of officers of courts and others, and certify to the correctness of the same, and the liabilities of the city therefor. But no fee-bills for cost for the prosecution of any citizen of the city for any criminal offense in the circuit court of ——— county, or for jail fees, shall be certified to or paid unless the offender shall have been duly convicted, and such costs cannot be collected from him.

SEC. 63. The city attorney may, in case of temporary absence, or otherwise being unable to attend to the duties of his office, with the consent of the mayor, and at his own expense appoint some competent attorney to act in his place. The city council may authorize the retaining of assistant counsel when deemed expedient.

(1) See *ante* p. 81, § 99.

SEC. 64. The city attorney shall not be compelled to bring or prosecute any suit, in any case, when he and the court may be satisfied that the complaint is instituted maliciously or vexatiously, and without any probable cause, and that the interest of the public or of the city, will not be subserved thereby, and if any person charged with any offense, shall, upon his trial therefor, be acquitted, and it shall satisfactariry appear to the court that the complaint or prosecution was instituted maliciously or vexatiously, and without probable cause, judgment may be rendered against the complainant or prosecutor for the costs arising in the case, and executions issued for the collection of the same.

POLICE MAGISTRATE.(1)

SEC. 65. There shall be elected on the third Tuesday of April, A. D. 18—, and quadrennially thereafter, a police magistrate for said city, who shall give bonds, qualify and have the same jurisdiction as other justices of the peace,(2)

SEC. 66. In case of a vacancy in the office of police magistrate, the unexpired term may be filled by the city council ordering a special election for that purpose immediately.

SEC. 67. The police magistrate, or any justice of the peace, before whom actions are tried for the violation of any city ordinance, shall recover the same costs as are affixed by Statute of Illinois for justices of the peace in similar cases: *Provided*, that judgment for costs shall not in any case be rendered against the city, but in cases where the defendant may be acquitted, or where the costs cannot be collected from the defendant when convicted, the magistrate or justice shall present to some regular meeting of the council a transcript from the docket, showing the costs accrued to him in said cause, which bill the city may pay or refuse to pay, in its discretion.

CITY MARSHAL.

SEC. 68. The mayor shall annually appoint a city marshal,(3) by and with the consent of a majority vote of all the aldermen authorized by law to be elected.(4) Said city marshal shall hold his office, unless sooner discharged, until the end of the municipal year for which he is appointed.(5)

SEC. 69. The city marshal shall be a conservator of the peace within the corporate limits of the city; shall execute all processes issued by the police magistrate, or any justice of the peace in said city, in any suit, case or action, commenced for the recovery of any fine, penalty or forfeiture for the violation of any of the ordinances of the city. And the city marshal shall arrest on view, without any process, any person whom he may find disturbing the peace by being drunk, either upon the street, or in any public house, park or other public grounds within the corporate limits of the city; or any person whom he shall find in any way disturbing the peace, quiet and good order of the city, by fighting, threatening to fight, or by using loud, boisterous noises, or using obscene language, or by profane swearing, or by quarreling, or by doing any other act tending to cre-

(1) See *ante* p. 115, § 192.

(2) See *ante* p. 125

(3) See *ante* p. 70, § 73.

(4) See *ante* p. 134.

(5) Where a charter of a city expressly provides that any person appointed to fill an office may be removed without assigning cause therefor; and this law being a public act, a party accepting office must know that his term of office could be terminated at any time. If discharged he could only recover pay for the time he worked. *The City of Chicago* v. *Edwards*. 58 Ill. R., 252.

ate a disturbance of the peace within the city; and shall convey such person, so arrested, immediately before the police magistrate, or some justice of the peace of the city, and set forth before such police magistrate, or justice of the peace, the offense with which the person or persons so arrested is charged; and the police magistrate, or justice of the peace, shall enter the said charge or complaint upon his docket, together with the name of the person or persons charged, at the suit of and in the corporate name of the city, and shall proceed to hear and determine said case in a peremptory manner; provided, that in case any person or persons shall be arrested under the provision of this section, who are too much intoxicated to proceed to trial, or in case it shall be too late in the day, or if from any cause it shall be impracticable to proceed with the trial of such case immediately, it shall be lawful for the marshal to confine such person or persons in the city prison, or county jail, until such drunken person or persons shall become sober, or until it shall become practicable for such case to be tried; provided, that either party may have such case tried by a jury of six men upon advancing the jury fees allowed by law.(1)

SEC. 70. It shall be the duty of the city marshal to attend, as far as practicable, all meetings of the city council, to prepare the room in which the council meeting shall be held, and see that it is properly lighted, warmed and made comfortable for the use of the city council at all its meetings, and to serve all notifications in writing, when ordered by the city council, and to perform all such other duties as shall be prescribed by ordinance, or by any resolution or order adopted by the city council.

SEC. 71. The city marshal shall keep all sidewalks in the city clear and free from all obstruction, and shall remove, or cause to be removed, or abated, all nuisances from within the corporate limits of the city; he shall, with his deputies, be at his post of duty at all reasonable hours, and for the purpose of executing the duties of his office he shall possess the power and authority of a constable at common law, and under the statute of Illinois.(2)

SEC. 72. This ordinance shall be known as ordinance No. —.

Passed ———, 18—.
Approved ———, 18—
Published ———, 18—

A. B., Mayor.

{ L. S. } Attest:
C. D., City Clerk.

(1) A proceeding to collect a penalty for the violation of a town ordinance is a civil suit. *Hoyer et al.* v. *The Town of Macoutah*, 59 Ill. R., 137.

(2) Where a writ is directed only to a constable, under it a city marshal has no authority to act, and all his acts are void. *Hickey* v. *Forristal et al.*, 49 Ill. R., 256.

Form of ordinance concerning dogs.

ORDINANCE NO. —.

AN ORDINANCE concerning dogs.

SECTION 1. *Be it ordained by the city council of* ————, That an annual tax(1) of one dollar on each dog, and two dollars on each bitch, within the corporate limits of said city, is hereby declared payable for each municipal year, on the first day of July, of each calendar year by the owner or keeper of such dog or bitch, to said city.

Any owner or keeper of such dog or bitch, who shall fail to pay said tax, or kill or permanently remove from the corporate limits of said city, such dog or bitch, on or before the time fixed for the payment of such tax, or who shall thereafter refuse to surrender to the city marshal on demand such dog or bitch for the purpose of being destroyed, shall be subject to a fine of five dollars. But said penalty may be avoided before trial by the payment of said tax and costs to date of payment.

SEC. 2. It shall be the duty of the city superintendent of streets, to annually, during the month of May, to prepare a complete list of all the dogs and bitches, and the owners and keepers thereof, within the corporate limits of said city. He shall submit said list for approval, additions and corrections to the city council, at the regular meeting of the city council in June. The city clerk shall furnish a true copy of said list to the city treasurer, and also to the city marshal, at least fifteen days before the 1st day of July of each year.

SEC. 3. The city marshal shall proceed as soon as said list is placed in his hands, to immediately demand and collect the dog tax indicated on said list as far as possible before the first of July of each year, and deliver in lieu of a receipt therefor, a metallic plate, having the letters C. T. P., and the calendar year in figures, which characters shall signify that the city tax is paid for the municipal year, beginning in the calendar year indicated.

The owner or keeper of any dog or bitch, upon which the dog tax has been paid as aforesaid, shall affix, in a permanent manner, to his or her dog or bitch, the metallic plate aforesaid, so that the same can readily be seen by the officers of said city. All dogs and bitches (not personally known to the city marshal as having the dog tax paid thereon), found running at large upon the streets and public grounds of said city, without the metallic plate affixed as aforesaid, are hereby declared a public nuisance,(2) which may be summarily abated and destroyed, according to the provisions of this ordinance.

SEC. 4. The city treasurer shall purchase a supply of the metallic plates aforesaid, in such numbers as the city council shall direct; and shall, from time to time, furnish the same to the city marshal, taking a receipt therefor; and the city marshal shall account for the manner of disposing of the same whenever required by the city treasurer.

SEC. 5. No dog or bitch shall be suffered to run at large within the corporate limits of said city, unless securely muzzled, when danger of hydrophobia shall be declared to exist, by the proclamation of the mayor of said city; and any owner or keeper of such dog or bitch who shall willfully violate the provisions of this section, shall be subject to a fine of five dollars.

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(1) See *ante* p. 61, clause 80.

(2) See *ante* p. 58, clause 75.

SEC. 6. No bitch, while in heat, shall be suffered to run at large within the corporate limits of said city; and any owner or keeper thereof willfully violating the provisions of this section, shall be subject to a penalty of three dollars.

SEC. 7. The city marshal shall cause, under his personal supervision, all dogs and bitches, living or kept, and found running at large, within the corporate limits of said city, upon which no tax has been paid by the owner or keeper thereof, according to the provisions of this ordinance, to be killed or summarily disposed of.(1) The provisions of this section shall apply to the dogs and bitches of non-residents, who have a permanent place of business in said city; but not to the dogs or bitches of such non-resident, if they have no such place of business.

SEC. 8. The following fees shall be allowed for services rendered, under the provisions of this ordinance, out of the city treasury:

To city superintendent of streets, ten per cent of the dog-tax collected.

To city clerk, five per cent. of dog-tax collected.

To city marshal, ten per cent. of dog tax collected; also, 50 cents for each dog or bitch killed and buried under the supervision of said city marshal who shall verify his claim against said city, for such last named fee by an affidavit, stating the time when such dog or bitch was killed and the place where the same was buried.

SEC. 9. The city treasurer and city marshal shall promptly credit each person on their respective lists, who shall have paid their dog tax aforesaid; and the city council shall cause said lists to be often examined by the financial committee of said council, and shall make such orders upon the report of said committee respecting said lists, as they may deem advisable for the public good.

SEC. 10. This ordinance shall be known as ordinance No. —

Passed ———, 18—.

Approved ———, 18—.

Published ———, 18—.

A. B., Mayor.

{ L. S. } Attest:

C. D., City Clerk.

(1) Dogs, according to common law, were of no such intrinsic value as that the crime of stealing them amounted to larceny. A man may have a base property therein, and maintain a civil action for the loss of them. 4 Bl. Com., p. 236. The law in this state, however, recognizes a right of property in a dog, and if it is destroyed without legal justification, the law implies damage, and a plaintiff is entitled to at least nominal damages, and it does in every case of illegal invasion of the right of property of another. *Brent* v. *Kimball*, 60 Ill., R. 212; *Spray* v. *Ammerman*, 66 Ill., R. 309.

Form of ordinance concerning obstructions on streets and sidewalks.

ORDINANCE NO. —.

AN ORDINANCE concerning obstructions upon streets and sidewalks.

SECTION 1. *Be it ordained by the city council of* ————, That it shall be unlawful for any railroad company, or conductor, engineer, agent, or other employee of such railroad company, or other person managing or controling any locomotive engine, car or train upon any railroad track, to drive, run or propel the same within the limits of said city, at a greater speed than four miles per hour;(1) nor in any manner to obstruct the travel or passage along any sidewalk, street or alley of said city by placing or leaving upon, along or across such sidewalk, street or alley, any truck, locomotive, car or train of cars or any material or thing whatsoever for a longer period than five minutes at any one time, and immediately thereafter for the full period of ten minutes, such sidewalk, street or alley, shall not be again obstructed in the manner aforesaid, under penalty of not less than five dollars, or more than twenty-five dollars, for each and every offense prohibited by this section.(2)

SEC. 2. That any railroad company which may now or hereafter operate any railroad within or through the limits of said city, shall construct and maintain safe, commodious and convenient crossings (3) across the track of such railroad, where the same intersects any street, alley, lane or avenue of said city, the full width of such street, alley, lane or avenue; and shall also make and maintain sufficient and proper conduits and gutters to carry off all water, under or along, such railroad track.(4)

The city superintendent of streets shall, from time to time, notify in writing, the station agent of any railroad company aforesaid, within what time and in what manner the city will require the construction or repair of the crossings, conduits and gutters aforesaid; and upon failure of such railroad company to construct or repair such crossings, gutters and conduits aforesaid, pursuant to the notice aforesaid, such railroad company shall forfeit to said city one hundred dollars; and upon the persistent refusal of such railroad company to comply with the notice aforesaid, for a period of thirty days after judgment for the first and each successive for feiture, the said railroad company shall forfeit to said city a like sum of one hundred dollars.

SEC. 3. Any person having the management of any railroad locomotive, who shall run or drive the same within the corporate limits of said city, without having placed on the top of the chimney thereof a bonnet, or spark arrester, sufficient to prevent all accidents by fire from the sparks of such locomotive; or who shall fail to constantly ring the bell of such locomotive, while the same is in motion; or who shall start such locomotive without first sounding the whistle or ringing the bell of such locomotive; or who shall blow off steam or unnecessarily blow the whistle of

(1) See *ante* p. 46, clause 21, Rev. Stat., p. 811, § 62; *ante* p. 46, note 3.

(2) See *ante* p. 43, clause 10.

A town ordinance which provides that no person shall put, or cause to be put, in any street, sidewalk, or other public place within the city limits any dust, dirt, filth, shavings, or other rubbish or obstruction of any kind, is broad enough to embrace the obstruction of a street by a railroad company with their cars. *Ill. Cent. R. R. Co.* v. *The City of Galena*, 40 Ill., Ill., R. 345; T., *P. & W. R. R. Co.* v. *Chenoa*, 43 Ill., R. 209.

(3) See *ante* p. 48, clause 26.

(4) See *ante* p. 49, clause 27.

such locomotive when such locomotive is not in motion, at a place and in a manner calculated to frighten teams passing along the public streets and alleys of said city, shall be subject to a fine for each and every offense mentioned in this section, of not less than ten dollars or more than one hundred dollars.(1)

SEC. 4. That any railroad company which may now or hereafter operate any railroad within or through the corporate limits of said city, shall fence the track of said railroad and maintain and forever keep in good repair such fence; and also shall construct and maintain suitable cattle guards at the point where such railroad track crosses the several streets and alleys of said city, and that upon failure to do so, such railroad company "shall be liable for all damages, the owner of any cattle or horses, or other domestic animals, may sustain by reason of injury thereto while on the track of such railroad, in like manner and extent, as under the general laws of this state relative to the fencing of railroads; and actions to recover such damages may be instituted before any justice of the peace, or other court of competent jurisdiction."(2)

SEC. 5. Every locomotive engine, railroad car, or train of cars, running in the night time, on any railroad track in said city, shall have and keep while so running, a brilliant and conspicuous light on the forward end, and while backing, a brilliant and conspicuous light on the rear end of such locomotive engine, car or train of cars;(3) any railroad company, their agents, or employees, failing to observe the provisions of this section shall be liable, jointly and severally, to a fine not less than ten dollars nor more than two hundred dollars.

SEC. 6. This ordinance shall be known as ordinance No. —.

Passed ———, 18—.

Approved ——— 18—.

Published ———, 18—.

A. B., Mayor.

{ L. S. } Attest

C. D., City Clerk.

Form of ordinance regulating construction of sidewalks.

ORDINANCE NO. —.

AN ORDINANCE to provide for the construction of sidewalks.

SECTION 1. *Be it ordained by the city council of* ————, That all the sidewalks of said city shall be built, when ordered by the city council, wholly at the expense of said city,(4) and in every case, under the

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(1) See *ante* p. 49, clause 27.

(2) See *ante* p. 48, clause 26.

(3) See *ante* p. 49, clause 27.

(4) See *ante* p. 46, clause 7; p. 44, note 1, to p. 43; p. 50, Note 2.

The legal obligation of a city to repair highways, is one voluntarily assumed by its corporate authorities, but when it constructs these improvements for the benefit of the public, it then becomes its duty to see that they are kept in repair. *The City of Joliet* v. *Verley*, 35 Ill. R., 58; *City of Aurora* v. *Gillett*, 56 Ill. R., 132; *Nevins* v. *City of Peoria*. 41 Ill. R., 502.

A sidewalk is a portion of a public highway, appropriated, it is true to pedestrians alone, but still open and free to all persons desiring to use and enjoy it as a public highway. It is as much public highway in the mode of its use as the street itself. *City of Ottawa* v. *Spencer et al.*, 40 Ill R., 217. See *ante* p. 40, note 1.

supervision of the city superintendent of streets, and of such width, material, and on such terms, and in such manner as the city council shall, by resolution, in each case provide: *Provided*, that all sidewalks hereafter constructed less than six feet wide, shall be set out at least one foot from the line of the adjoining lot or premises; and, also, that no sidewalk shall be constructed exceeding ten feet wide exclusive of curb-stone.

SEC. 2. Upon failure of the city council to order a sidewalk to be built in any part of the city upon due application by any person for the same to the city council, the person or persons desiring such sidewalk may construct the same under the supervision of the city superintendent of streets of such material and width to be approved by the city council, and one-half of the cost of such material, shall in every case be paid out of the city treasury:(1) *Provided*, always, that there are unexpended funds in the city treasury belonging to the sidewalk appropriation.

SEC. 3. The city superintendent of streets is hereby authorized, under the directions of the city council, to tear up and and replace any sidewalk for the purpose of establishing a uniformity in the hight of connecting sidewalks and crossings.(2)

SEC. 4. This ordinance shall be known as ordinance No. —

Passed ———, 18—.

Approved ———, 18—.

Published ———, 18—.

A. B., Mayor.

{ L. S. } Attest:

C. D., City Clerk.

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(1) See *ante* p. 43, note; *ante* p. 22, note 1; *ante* p. 60, note 1, to p. 59.

A city is bound only to see that its sidewalks are reasonably safe. *City of Chicago* v. *McGiven*, 78 Ill. R., 347.

A city cannot by ordinance compel a citizen to remove snow from a sidewalk in front of his premises any more than to remove any obstructions from the middle of the street. *Gridley* v. *City of Bloomington*, Sup. Court Ill. Sept. 1878.

Author of a nuisance is liable for a continuance of it, though he has demised the premises to another. So where the owner of a premises elevated the sidewalk adjacent thereto, without the authority of the city, and in which he placed a grading next to the building which was so defective that a person stepping upon it fell into the area below, and was injured thereby, it was held, that the party who thus made the sidewalk less safe than before, was liable to the party injured by reason thereof. *Stephani et al.* v. *Brown*, 40 Ill. R., 428.

(2) Sidewalks need only be reasonably safe for persons exercising ordinary care and caution in using them. *The City of Chicago* v. *McGiven*, 78 Ill. R., 352.

Form of ordinance regulating nuisances.

ORDINANCE No. —.

AN ORDINANCE concerning nuisances, and providing penalty therefor.

SECTION 1. *Be it ordained by the city council of* ————, That within the territorial jurisdiction of said city, it is hereby declared to be a nuisance for any person or persons, or corporation ;(1)

First—To so negligently conduct any business, or use any premises as to create such an offensive smell as may taint the air and render it unwholesome or disagreeable to other persons.(2)

Second—To cause or suffer the carcass of any animal or any offal, filth, or noisome substance to be collected, deposited or remain in any place to the prejudice of other persons.(3)

Third—To throw or deposit any offal or other offensive matter or the carcass of any animal in any water-course, pond, spring or well.(4)

Fourth—To deposit any night soil, dead animal, or other filthy, offensive or noisome substance upon any lot, street, alley, highway, park or other place.(5)

Fifth—To corrupt or render unwholesome or impure the water of any spring, stream pond or well, to the injury or prejudice of others.(6)

Sixth—To obstruct or impede, without legal authority, the passage of any gutter, conduit, sewer, or the natural drainage of any public or private property.(7)

Seventh—To obstruct or encroach upon public highways, private ways, streets, alleys or commons.(8)

Eighth—To establish, maintain and carry on any offensive or unwholesome business within the limits of said city, or within one mile of the limits thereof.(9)

Ninth—To establish a cemetery within the corporate limits of said city, or within one mile of the limits thereof, without first having obtained permission so to do under an ordinance of the city council of said city.

Tenth—To permit or suffer any offal, filth, refuse, animal or vegetable matter, which is liable to become putrid or offensive, or injurious to health, to remain on any premises used or occupied by him, her or them, for a longer period than four hours at any one time.(10)

Eleventh—To keep, or suffer to be kept, in a foul, offensive, nauseous or filthy condition, any railroad car, building, yard, cellar, barn, sewer, pigsty or privy.(11)

Twelfth—To own, keep or use any railroad car, yard, pen, place or premises, in or upon which cattle or swine shall be confined, or kept, so as to be offensive to persons residing in the vicinity of the same.(12)

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(1) See *ante* p. 58, clause 75.

(2) See *ante* p. 62, clause 83.

(3) See *ante* p. 60, clause 78.

(4) See *ante* p. 51, clause 40.

(5) See *ante* p. 45, clause 15.

(6) See *ante* p. 51, clause 40.

(7) See *ante* p. 50, clause 29.

(8) See *ante* p. 43, clause 10.

(9) See *ante* p. 60, clause 79.

(10) See *ante* p. 60, clause 78.

(11) See *ante* p. 62, clause 84.

The maxim, "Use your own property so as not to injure another," is quite applicable to a railroad corporation as to individuals, except so far as the law creating it may have granted to it immunity, and a recovery can and should be had for such damages as arise out of the careless or negligent acts of a railroad company in regard to any usual and necessary appurtenance to their road. *I. C. R. R. Co.* v. *Grabell*, 50 Ill. R., 241.

(12) See case above cited.

Thirteenth—To erect, continue, or use any building or other place, for the exercise of any trade, employment, or manufacture, which by occasioning noxious exhalations, offensive smells, or otherwise, is offensive or dangerous to the health of individuals, or of the public.(1)

Fourteenth—To locate and use without first having obtained permission of the city council to do so, any packing house, rendery, tallow chandlery, bone factory, soap factory, tannery, brewery, distillery, livery stables, blacksmith shops, or foundry.(2)

Fifteenth—For the owner or keeper of any lot or premises to suffer to remain thereon to the annoyance and detriment of other persons, a dilapidated building liable to fall or take fire, and which by reason of its proximity to the contiguous or adjacent buildings and premises of other persons, does endanger their life or property.(3)

Sixteenth—For the owner or keeper of any lot or premises to suffer to stand or remain thereon, water which is or which may become stagnant, foul and offensive, as well as detrimental to the health and comfort of persons residing in the neighborhood thereof.(4)

Seventeenth—To erect or use habitually any house or lot for the purpose of butchering or slaughtering cattle, calves, sheep or swine without permission granted by the city council.(5)

Eighteenth—To boil or render tainted lard, or other animal substance, so as to taint the air or render it unwholesome or offensive.(6)

Nineteenth—To use in the erection or repairing of any building, a scaffold or scaffolds, not wide enough to insure the safety of persons working thereon, or persons passing under or near the same.(7)

SEC. 2. Whoever violates any clause or section of this ordinance, shall be fined not less than three dollars or more than two hundred dollars; and if any such person or corporation shall continue a nuisance after being fined for the same, a new cause of action shall immediately accrue against such person or corporation, subjecting the offender to a like penalty aforesaid; and so on, after the rendition of each fine, the continuance of such nuisance shall be deemed a new cause of action, subjecting the offender to a like penalty as aforesaid: *Provided*, that the offender shall, in every case, under this ordinance, be notified by some executive officer of said city, to remove or abate any such nuisance, and be allowed a reasonable time, to be fixed by such officer in such notice, according to the nature of such nuisance, to so remove and abate the same; and upon so doing within the time fixed by such officer, the offender shall not be subject to the fine aforesaid, unless the commission of such nuisance was willful or resulted in actual damage to the person or property of some person or corporation.(8)

SEC. 3. This ordinance shall be known as ordinance No. —.

Passed ———, 18—.

Approved ———, 18—.

Published ———, 18—.

A. B., Mayor.

{ L. S. } Attest

C. D., City Clerk.

(1) See *ante* p. 60, clause 78.

(2) See *ante* p. 62, clause 81, 82.

(3) See *ante* p. 58, clause 75.

(4) See *ante* p. 51, clause 40.

(5) See *ante* p. 62, clause 83.

(6) See *ante* p. 62, clause 81.

(7) See *ante* p. 57, clause 63.

(8) See *ante* p. 58, note; p. 59, note; p. 60, note.

Form of ordinance regulating health of city.

ORDINANCE NO. —.

AN ORDINANCE concerning contagious diseases and health of the city.

SECTION 1. *Be it ordainded by the city council of* ————, That it is hereby declared the duty of every practicing physician who shall have a patient within the territorial jurisdiction of said city, sick or affected, or supposed to be affected, with a contagious, infectious, or pestilential disease, to forthwith make report thereof, in writing, to the mayor or city marshal, describing the locality of such patient, so that he or she may be readily found; and the mayor or city marshal shall immediately cause a suitable notice, with the name of the disease printed or written in large letters thereon, to be posted up in the most conspicuous place, on or near the building or dwelling in which such contagious disease exists and require the occupants thereof to maintain and so keep up such notice until, in the opinion of a competent physician, such notice may be safely discontinued; and any physician failing to make report as aforesaid, and any person failing or refusing to maintain or keep up the notice aforesaid, shall be subject to a penalty of not less than five dollars or more than fifty dollars.(1)

SEC. 2. Any person having, or having had the small-pox, or other like malignant or infectious disease, who shall go about in any public place, while in danger of giving such disease to others, shall be subject to a penalty of not less than twenty nor more than one hundred dollars: *Provided*, that this shall not apply to cases where such person shall have first consulted some respectable physician, and obtained from him a written statement that such person is in no danger of giving the disease to others. Any person attending, or being about any other person having the small-pox, or other infectious disease, who shall not change, or purify his or her wearing apparel, before going into any public place, or shall otherwise so conduct himself or himself as to endanger the spreading of the disease, or giving it to others, shall be subject to a penalty of not less than twenty-five nor more than one hundred dollars for each offence.

SEC. 3. Whoever shall keep, sell or deliver any poison usually known or used as deadly poison, without legibly marking the name thereof, and the word "Poison" upon the phial, wrapper, box or other enclosure containing the same; or whoever shall sell or deliver any arsenic, strychnine, prussic acid, or other poison usually known or used as deadly poison, to any person without registering the name of such person and the kind and quantity of poison so sold or delivered, and the purpose for which the same was obtained, shall be subject to a penalty of not less than five nor more than twenty-five dollars for each and every offense.(2)

SEC. 4. The storage within the corporate limits of said city, of gunpowder, tar, pitch, resin, coal oil, benzine, turpentine, hemp, cotton, hay, straw, nitro-glycerine, petroleum, or any of the products thereof, and other combustible or explosive material, in any car, or upon any premises, by any person, in such quantity, or bulk, as to endanger seriously the life or property of any person, shall subject the offender (after reasonable notice by some official of said city to abate the same) to a penalty of not less than ten dollars or more than one hundred dollars.(3)

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(1) See *ante* p. 60, § 78.

(2) See Rev. Stat., p. 361, § 62, 63; HAINES' TREATISE, new ed., p. 592.

(3) See *ante* p. 57, clause 65.

SEC. 5. The mayor shall annually during the month of May, cause printed notices to be posted up, commanding all persons in said city, within fifteen days from the date of said notices, to thoroughly cleanse and purify their yards, barn lots, pig styes, cellars, privies, and the alleys and streets adjacent, of all trash, filth, manure, and other noisome substances likely to occasion disease, or prove offensive to any person in said city, under penalty of failure so to do, of rigid prosecution under the ordinances of said city; and it is hereby declared the duty of the city marshal and city superintendent of streets, to inspect the yards, barn lots, pig styes, cellars and privies, of every person in said city (using no force however for that purpose), as well as all the streets and alleys of said city, and shall make complaint and cause to be prosecuted every person who fails to comply with such notices: *Provided*, that the notices aforesaid shall not be construed as a condition precedent to fixing the liability of any person for the violation of any ordinance of said city, but simply as a warning to all persons of their duties and liabilities under said ordinances.

SEC. 6. This ordinance shall be known as ordinance No. —.

Passed ———, 18—.

Approved ———, 18—.

Published ———, 18—.

A. B., Mayor.

{ L. S. } Attest:

C. D., City Clerk.

Form of ordinance relating to vagrants.

ORDINANCE NO. —.

AN ORDINANCE concerning vagrants.

SECTION 1. *Be it ordained by the city council of* ————, That a vagrant, under the meaning and provision of this ordinance, shall be deemed to be:(1)

First. Any male person over the age of sixteen years, or any female person over the age of fourteen years, who there is reason to believe live idly, without proper and diligent effort to procure employment, and without any visible means to support or maintain themselves, and without any settled abode, and are of vicious character and depraved habits, or who shall be found loitering or rambling about, or wandering about or loitering in groceries, tippling houses, beer houses, out-houses, bawdy houses, houses of bad repute, sheds, stables, market houses, lumber yards, or in the open air, or who shall be found trespassing upon the private premises of others and not giving a good account of themselves.

Second. Any person upon whom shall be found any instrument or thing used for the commission of burglarly, or for picking locks, or pockets, and who shall fail to give a good account of the possession of the same.

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(1) See *ante* p. 58, clause 74; See Laws 1877, p. 87.

To authorize a police officer in arresting a person, without a warrant, for the violation of an ordinance declaring all persons vagrants who not having visible means to maintain themselves, or found without employment loitering or rambling about, or staying in groceries, drinking saloons, etc., there must be shown a want of visible means of support, as well as other facts. *Shanley* v. *Wells*, 71 Ill. R., 78.

Third. Any prostitute, courtezan, bawd or lewd woman, or any inmate of any bawdy-house, or house of prostitution, or assignation, brothel, or house of bad repute, who shall be found wandering about the streets in the night time, or frequenting dram shops or beer houses.

Fourth. Any procurer, pimp or other male person inhabiting a bawdy house, or house of prostitution or assignation, or in any way connected with the keeping of any such house.

Fifth. Any male or female person who knowingly associates with persons having the reputation of being thieves, burglars, pickpockets, bawds, prostiutes or lewd women, or gamblers, or who lodges in or frequents houses or other places having the reputation of being the resort of thieves, burglars, pickpockets, bawds, prostitutes or lewd women, or gambling houses, or places for the reception of stolen property.

SEC. 2. On the trial of any person charged with being a vagrant, it shall be lawful to introduce testimony as to the character and reputation of the defendant touching any of the matters set forth in section 1 (one) of this ordinance, by either the city or the accused. Any person who shall be convicted of being a vagrant under the provisions of section one of this ordinance, shall, upon conviction thereof, be fined in a sum not less than five nor more than one hundred dollars.(1)

SEC. 3. This ordinance shall be known as ordinance No. —.

Passed ———, 18—.

Approved ———, 18—.

Published ———, 18—.

A. B., Mayor.

{ L. S. } *Attest:*

C. D., City Clerk.

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Form of ordinance regulating fire limits.

ORDINANCE NO. —.

AN ORDINANCE concerning fire limits.

SECTION 1. *Be it ordained by the city council of* ————, That all that part of the city of ————, ————county, Illinois, embraced within the following limits shall hereafter be known as the fire limits of said city, namely :(2)

[*Here describe the fire limits.*]

SEC. 2. No building or structure of any kind, or description, shall be erected or constructed, within said fire limits, unless the outside and party walls thereof shall be composed of brick, stone, iron, or other incombustible material; and all buildings which shall or may be hereafter erected or constructed within said fire limits shall have outside walls of not less than one foot in thickness; and if any building shall be more than two stories in height (above the basement), the outside walls of the basement and first story shall not be less than sixteen inches in thickness; and the walls of the stories above the second shall not be less than twelve inches in thickness, and that all outside walls, with the exception of rear walls, shall extend at least twelve inches above the roof: *Provided*, that buildings erected and used as dwellings only, may be constructed with walls in

(1) See *ante* p. 54, note.

(2) See *ante* p. 56, clause 62.

all cases, four inches less in thickness than is herein above specified, and that any building, cottage or barn, one story in height, may be built with walls not less than eight inches thick; and, provided further, that no cornice of wood shall be placed on any building over one story in height, not counting the basement (if any) as one story; and that all wooden joists, beams, or other timbers in outside and party walls shall be seperated at least four inches from each other with stone or brick laid in mortar, and all wooden lintels or plate pieces in the front, rear, or side walls, shall recede from the outside of the wall at least four inches; or when they shall not so recede they shall be covered with fire proof material.(1)

SEC. 3. It shall be unlawful for any person or persons, company or corporation to cover or recover any building now erected or hereafter erected within said fire limits with any shingles, boards, planks or other combustible material whatever; but all such buildings shall in all cases be covered with metal, tile, slate, or some other equally good fire proof material: *Provided*, that the city council may for good and sufficient reason shown, grant a permit to any person applying therefor to cover or recover any building in said fire limits, with shingles or other material.

SEC. 4. Sheds not exceeding twelve feet in height at the peak, or highest part thereof; and privies not exceeding eight feet square and ten feet in height at the peak, may be constructed of wood: *Provided*, that the term "shed" be so construed as to mean a structure with a roof sloping one way and with one or more sides of such structure entirely open.

SEC. 5. All depositories for ashes within or without the fire limits, shall be built of brick or other fire proof material, when not at least twenty-five feet distant from any combustible material or building.(2)

SEC. 6. No wooden building,(3) or part of any wooden building within said fire limits, shall be raised, enlarged or repaired, except those buildings used exclusively for private dwelling houses may be repaired, subject to the provisions of section 3 of this ordinance, but shall not be raised or enlarged, nor shall any such wooden buildings or part of wooden buildings within the fire limits be removed to any other place within the same, nor shall any wooden building within the fire limits, which may become damaged to the extent of fifty per cent. of the value thereof by fire or other casualty, be repaired or rebuilt, nor shall any such building, when the damage thereto is less than fifty per cent. of its value, be so repaired as to be raised higher than the highest point left standing after such damage shall have occurred, or so as to be in better condition or state of repair than before such damage, or as to occupy a greater space than before the injury thereto; and the extent of damage that may be done to any such building by fire or other casualty, may be determined by three disinterested citizens of the city, one of whom shall be selected by the owner of the building, or his agent, the second by the mayor or city council, and the two chosen shall select a third, and the decision of the persons so chosen shall be final and conclusive.(4)

SEC. 7. Any owner, builder, or other person, who shall own, build or aid in the erection of any building, or part of any building, within the fire limits, contrary to, or in any other manner than authorized by the provisions of this ordinance, or who shall own, remove or assist in removing any such building, or part thereof, from without said limits into the same, or own, repair or assist in repairing any damaged or wooden building, contrary in either case to any provisions of this

(1) See *ante* p. 56, clause 61.

(2) See *ante* p. 57, clause 63.

(3) See *ante* p. 56, clause 62.

(4) See *ante* p. 56, clause 62.

ordinance, shall be subject to a fine of not less than twenty-five nor more than one hundred dollars for the first offense, and to a like fine for every forty-eight hours such person shall fail to comply with the provisions of this ordinance, or continue in the violation of the same, he shall be subject to a like fine.

SEC. 8. Any wooden building, or part of any wooden building, which may be erected, enlarged, removed or repaired, contrary to this ordinance, shall be deemed a nuisance, and upon information of such violation, the mayor shall give due and reasonable notice to the owner and builder thereof, to abate, remedy or remove the same, or such part thereof as may be necessary, and upon his failure to comply with said notice, the mayor shall, by an order in writing, require the city marshal to remove or tear down such building or such part thereof as may be necessary, and the city marshal shall execute the order of the mayor, and shall report the costs and expenses of such removal, upon oath, to the city council for allowance, and such costs and expenses may be collected of the owner or builder of any such building liable therefor, by suit, in the name of the city before any court having jurisdiction.(1)

SEC. 9. No person shall, without the consent in writing of the mayor or an order of the city council, throw, place, pile or deposit within the fire limits of said city, any wood, lumber, timber, hay, straw, or other combustible material, so as to endanger any building by the burning thereof, and any person so offending shall forfeit and pay to the use of the city the sum of five dollars for each offense, and a further sum of ten dollars for every twenty-four hours he allows the same to remain after notice to remove the same by the city marshal or mayor, to be recovered as other penalties herein provided.(2)

SEC. 10. No person shall, without the fire limits of said city, place, pile or throw any wood, lumber, timber, hay, straw, or other combustible material into any lot, street or alley, or on his own premises, contiguous to and so as to endanger the buildings or property of other persons, and any person so offending shall be considered and adjudged guilty of a nuisance, and forfeit and pay the sum of ten dollars for each offense, and the further sum of ten dollars per day for each day he shall allow the same to remain after notice by the city marshal, or other person, to remove or abate the same.(3)

SEC. 11. No person shall build, make or kindle any fire in any plank or other temporary shed, unless such building or shed shall have therein a stove, chimney or vault in which to make or kindle such fire; and every person so offending, shall forfeit and pay the sum of not less than five nor more than twenty-five dollars for each and every offence.

SEC. 12. It shall be unlawful within said city to build, or have built, or use when built, any chimney with walls of less than four inches of thickness of brick or stone, completely imbedded in lime mortar, and plastered on the inside with a smooth coat of the same; and hereafter no chimney shall be constructed in said city with a flue less than eight by eight inches;(4) and if intended for full two stories of any building, such flue shall not be constructed less than eight by twelve inches. All chimneys shall be extended at least three feet above the roof.

SEC.13. No stove pipe, when in use, shall be less than four inches from any wood or other combustible material, unless there is a double circle of

(1) See *ante* p. 58, clause 75.
(2) See *ante* p. 64, clause 93.
(3) See *ante* p. 57, clause 65.
(4) See *ante* p. 57, clause 63.

tin connected together and air holes through the connecting tin between said pipe and combustible substance.

SEC. 14. Holes for stove pipes shall have a sheet iron thimble or other fire proof material inserted into the chimney, imbeded in mortar, and, when not in use, shall be covered with a sheet iron stopper with a flange at least one inch wide outside of the brick.

SEC. 15. No lighted candle or other material used for light, shall be used in any stable or building, where hay, straw, shavings, or other combustible materials are kept unless the same be well secured in a lantern; and any person violating the provisions of this section, shall be subject to a penalty of not less than five dollars or more than twenty-five dollars.(1)

SEC. 16. The mayor of said city may inspect or cause the city marshal to inspect, during business hours, any stove or stoves, fire-place or fire-places, flues or chimneys, or any place where fire is kept, for the purpose of ascertaining whether the same are so fixed as not to endanger the building in which the same may be, or any building contiguous thereto, or to endanger any building in the town, and to notify the occupants to make all necessary repairs and see that the same are done within a resonable time; and whenever, in the opinion of any officer of said city, upon making the inspection aforesaid, any chimney, stovepipe or flue, is in such a condition as to render the use thereof unsafe, such officer may order the occupant or occupants, owner or owners of any such building wherein is situate any such chimney, stovepipe, or flue, to forthwith make all necessary repairs to render the use of such chimney, stovepipe, or flue, safe against accident by fire to such building; and upon failure of any person, after reasonable notice, to make the repairs aforesaid, or comply with all or any of the provisions of sections 12, 13 and 14 of this ordinance, he or she shall be subject to a penalty of not less than ten dollars or more than fifty dollars for each and every offence; and the city marshal shall proceed to make such repairs, and the cost of making the same, shall be added to said penalty, or may be recovered in a separate action in the name of said city.

SEC. 17. The city marshal shall at the expense of said city provide some suitable building for, and take charge of all ladders, fire-hooks, axes, buckets, engines or other fire apparatus belonging to said city, and shall in no case suffer any of said fire apparatus above specified to be removed from such building, unless upon an alarm of fire, or when it may be necessary to have the same repaired, and in all cases as soon as the fire is ended, or necessary repairs made, such apparatus shall, at once be restored to its proper place; and any person or persons who shall remove any of the above apparatus from such building unless at such times and for purposes above specified, shall each be subject to a penalty of not less than five nor more than one hundred dollars for each and every offence, and five dollars additional for every twenty-four hours he, she or they shall keep such apparatus, or any part thereof, from such building.

SEC. 18. This ordinance shall be known as ordinance No. —.

Passed ———, 18—.
Approved ———, 18—.
Published ———, 18—.

A. B. Mayor.

{ L. S. } Attest:
C. D., City Clerk.

(1) See *ante* p. 57, clause 63.

Form of ordinance regulating weights and measures.

ORDINANCE NO. —.

AN ORDINANCE concerning weights and measures.

SECTION 1. *Be it ordained by the city council of* ————, That the mayor, by and with the consent of the city council, may annually appoint a weighmaster, who shall furnish his own scales and receive in full compensation for his services the fees provided for in this ordinance.(1)

SEC. 2. Upon complaint of any person that the scales of such weighmaster are not correct, the committee on public works and property may, if they deem the complaint is well founded, cause the sealer of such weighmaster to be tested by the county scales of ——— county, Illinois, or other authorized sealer, under the Statues of Illinois.(2)

SEC. 3. It shall not be lawful for any person to sell or dispose of any load of hay, stone coal, or grain (except the same is for dealers in bulk who provide their own scales) within the corporate limits of said city, without first having the same weighed by the weighmaster and obtaining from him a certificate of the weight of such load of hay, coal or grain, and the weight of the wagon upon which the same may be loaded; and every person violating the provisions of this section shall be fined one dollar for each and every offence.(3)

SEC. 4. No person or persons shall sell or dispose of firewood by the load, or in any less quantity than one cord, within the limits of said city, without first having had the same measured by the weighmaster, and obtained from him a certificate of the quantity; said certificate shall state the number of feet contained in such load, and the number of cords or parts of cords, for whom measured and when, and on the sale of the wood said certificate shall be delivered over by the seller to the purchaser, to be kept by him for his own benefit. Any person violating the provisions of this section, shall be subject to a penalty of one dollar for each and every offence.

SEC. 5. It shall be the duty of the weighmaster, in execuing the certificates aforesaid, to show the name of the owner of the property weighed, or measured, the day when weighed or measured, the gross weight of the wagon and load weighed, the weight of the wagon, and the net weight of the hay, coal or grain weighed, and he shall sign his name to such certificate and deliver the same to the person at whose instance such load is weighed or measured; and in measuring wood, he shall carefully examine the manner in which the same is piled, and make suitable deduction for loose and improper piling in estimating the amount thereof, and in every case he shall deal impartially and render a true certificate; and upon failure so to do, shall be subject to a penalty of not less than five dollars or more than twenty-five dollars.

SEC. 6. For each and every load weighed, the weighmaster weighing the same shall charge the sum of ten cents, and for each and every load of fire wood, by him measured, he shall charge the sum of ten cents, the charges to be paid, in all instances, before the issue and delivery of the certificate of the weight or measure thereof, by this ordinance required.

SEC. 7. The weight and measurement of all hay, coal, grain and wood in said city, shall be by the standard weights and measures established by the State of Illinois.

(1) See Laws 1875, p. 41: *ante* p. 134, § 246.

(2) See Rev. Stat., p. 1098.

(3) See *ante* p. 56, clause 54.

SEC. 8. Any person who shall sell, or permit any person in his or her employ to sell, stone coal, hay, grain, or wood, in said city, by weight or measurement, in less quantity than the amount that such person shall purport to sell at any such sale, the person or persons so offending shall, upon conviction, forfeit and pay a fine of not less than ten nor more than one hundred dollars for each offence.

SEC. 9. This ordinance shall be known as ordinance No. —.

Passed ———, 18—.

Approved ———, 18—.

Published ———, 18—.

A. B., Mayor.

{ L. S. } Attest:

C. D., City Clerk.

Form of ordinance relating to sewerage.

ORDINANCE NO. —.

AN ORDINANCE concerning sewerage.

SECTION 1. *Be it ordained by the city council of* ————, That in order to gradually establish a uniform system of sewerage and drainage throughout said city, in the interest of the health of the inhabitants thereof, the city council shall annually levy and collect a tax upon the taxable real and personal estate of said city, not to exceed one mill upon a dollar of the assessed value of said estate, which tax shall be known as the "Sewerage fund tax,"(1) and shall be levied and collected in the same manner that other general taxes of said city are levied and collected, and when collected shall be expended solely for the extension and laying of drains and sewers, and the maintenance of such drains and sewers as may be or have been already constructed in said city: *Provided*, that the committee on public work and property shall first certify to the city council annually the amount necessary for such purpose.

SEC. 2. That in order to preserve a record of the location of the several sewers and drains of said city, the city council shall cause a map of said city to be executed on some durable and flexible material by some competent draughtsman; which map shall be proportioned on a scale of feet, and shall show the relative position and name of all the streets and alleys of said city, as well as the several sloughs, branches and creeks in and adjoining said city. Said map shall be put upon rollers and filed for reference in the city clerk's office of said city.

SEC. 3. The city superintendent of streets shall ascertain, as near as possible, the location and size of all drains or sewers now located under the streets and alleys of said city, as well as the place where the same may be tapped by private drains, and shall cause the size and location of the same, and the place where tapped, to be indicated on the map aforesaid and in like manner hereafter shall cause the size and location of all sewers and drains situate as aforesaid, to be indicated on said map as the same are constructed by said city, or by any person, by the permission of said city.

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(1) See *ante* p. 50, clause 29.

SEC. 4. By the term "main drain," under this ordinance, shall be understood a tiling placed at such a depth below the surface of the earth and of sufficient size as to serve only as a complete drainage (when tapped) for such water as rises from natural cause into the cellars and wells belonging to the inhabitants of said city to their injury. And the use of any such main drain by any person for any other purpose, without the written permission of the city council, shall subject such person to a fine of not less than five dollars or more than fifty dollars.

SEC. 5. By the term sewer, under this ordinance, shall be understood a subterraneous canal sufficiently large as to conduct water, slop, offal and filth through the same. But no person shall use any sewer for any purpose other than the passage of water without a written permit from the city council, which permit shall expressly state for what other purpose and upon what terms such sewer shall be used by such person. Any person violating the provisions of this section shall be fined not less than ten dollars or more than one hundred dollars.

SEC. 6. No person, without the permission of the city council, shall conduct any water from the surface of any street, alley, lot or roof of any building into any main drain or sewer of said city, under penalty for so doing of not less than five dollars or more than fifty dollars.

SEC. 7. Any person may tap any drain or sewer of said city, with a private drain constructed at his or her own expense for the purpose of conducting the water only which may arise from natural causes, into any cellar, well, cistern, flower-pit or vault, under the supervision of the city superintendent of streets, upon the payment to him of a fee of fifty cents for making the measurement and record required in the next section.(1)

SEC. 8. It shall be the duty of the city superintendent of streets to note, or cause to be indicated, on the map aforesaid, the exact place where any private drain taps any main drain or sewer of said city, and, in doing so, shall indicate in figures the number of feet such place is from the north or east corner (as the case may be) of the adjoining block of lots.

SEC. 9. The city superintendent of streets shall at the expense of said city, cause to be constructed three moveable frame works, each about ten feet long, of the shape of an "A," and sufficiently wide at the base to span any excavation made for the purpose of constructing or repairing any drain or sewer; and it shall be the duty of said officers to cause such frame works to be placed over all such excavations during the night time, and at all other times when the same are left unguarded, in order to prevent animals and persons from falling into such excavations or being injured thereby.(2)

SEC. 10. The construction and repair of main drains and main sewers as aforesaid, shall be adjudged by all courts as a street and alley improvement; and all persons when required shall work out their fines or perform street labor in aid of the same, under the supervision of the city superintendent of streets, in the same manner and on the same terms as other street labor is performed.

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(1) A regulation of a board of public works of a city, which requires citizens desiring to use the water of the city flowing through the main pipes, to lay down at their own expense the necessary service pipes from their lots to the main pipes is but just and reasonable. *Prindeville et al.* v. *Jackson et al.*, 79 Ill. R., 337.

Where a person, in preparing to build a house in a city, extended his cellar across the sidewalk, without procuring a license so to do, he was held liable for all damages arising from such unauthorized excavation in the sidewalk, the party receiving injury thereby having exercised reasonable care for his own safety. The license of a city will not authorize an individual to make an excavation in a public street, and leave it insufficiently graded. *Pfau* v. *Beynolds*, 53 Ill. R., 312.

(2) See *ante* p. 45, note.

SEC. 11. No main drain or main sewer shall be constructed in said city, except expressly ordered by a vote of the city council; and when so ordered the committee on public works and property may let the construction of the same to the lowest and best bidder, and for that purpose may call upon the city superintendent of streets to furnish specifications of the kind of material to be furnished and nature and extent of work to be done; or the said committee may order the city superintendent of streets to procure labor and material at the expense of said city at prices subject to their approval.

SEC. 12. It is hereby declared the duty of all persons to place a screen over the end of any private drain connecting their premises with any main drain or main sewer of said city, under penalty of failure so to do of not less than three dollars or more than fifteen dollars.

SEC. 13. Any premises connected by a private drain to any main drain or main sewer of said city, shall subject such premises to inspection by city superintendent of streets during business hours, to the end that the provisions of this ordinance may be rigidly enforced against all persons who fail to comply with the same; and to this end it is hereby declared the duty of the city superintendent of streets to examine the inlet and outlet of all drains and sewers at least once a year.

SEC. 14. It shall be unlawful for any person to wilfully or maliciously injure, obstruct, or remove any drain or sewer, under penalty of not less than three dollars or more than two hundred dollars.

SEC. 15. It shall be unlawful for any person by an under drainage or tiling connected with the cellar, cistern, well or vault of such person to cause the water or other fluid from such cellar, cistern, well or vault to flow in or upon any street or alley of said city, under penalty for so doing of not less than five dollars or more than twenty-five dollars: *Provided*, that it shall be the duty of the city marshal to give any such person five days notice to tear up or prevent any such drainage aforesaid before a violation of this section shall be adjudged to have occurred.

SEC. 3. This ordinance shall be known as ordinance No. —.

Passed ———, 18—.
Approved ———, 18—
Published ———, 18—

A. B., Mayor.

{ L. S. } Attest:
C. D., City Clerk.

Form of ordinance concerning levy of taxes.

ORDINANCE NO. —.

AN ORDINANCE concerning taxes.

SECTION 1. *Be it ordained by the city council of* ————, That the city council shall on or before the second Tuesday of August, in each year, ascertain the total amount of appropriations for all corporate purposes, legally made (by an ordinance termed the annually appropriation bill), and the said city council shall, by ordinance, levy and assess such amount, so ascertained, upon the real and personal property within said city, subject to taxation, as the same is assessed for state and county purposes for the current year; taking into consideration, however, the probable revenue of said city, from sources other than by general taxation. Said ordinance may be eutitled as follows: "An ordinance imposing city tax for the year A. D. 18—," (stating in figures the current year).(1)

SEC. 2. A certified copy of said ordinance, imposing city tax as aforesaid, shall annually be filed on or before the second Tuesday of August, with the county clerk of ——— county, Illinois, whose duty it shall be to ascertain the rate per cent. which, upon the total valuation of all property subject to taxation within said city, as the same is assessed and equalized for state and county purposes, will produce a net amount not less than the account so directed to be levied and assessed, and it shall be the duty of said county clerk to extend such tax in a separate column upon the book or books of the collector or collectors of state and county taxes within said city.

SEC. 3. The tax so assessed shall be collected and enforced in the same manner and by the same officers as state and county taxes, and shall be paid over by the officers collecting the same to the city treasurer of said city.

SEC. 4. It shall be the duty of the officer collecting such tax to settle with and pay over to said city treasurer, as often as once in two weeks from the time he shall commence the collection thereof, all such taxes as he shall then have collected, till the whole tax collected shall be paid over.

SEC. 5. Whenever said city is required to levy a tax for the payment of any particular debt, appropriation or liability of the same, the tax for such purpose shall be included in the total amount assessed by the city council, and certified to the county clerk as aforesaid; but the city council shall determine, in the ordinance making such assessment, what proportion of such total amount shall be applicable to the payment of such particular debt, appropriation or liability; and the city treasurer shall set apart such proportion of the tax collected and paid to him for the payment of such particular debt, appropriation or liability. and shall not disburse the same for any other purpose until such debt, appropriation or liability shall have been discharged.

SEC. 6. All taxes levied or assessed by said city, except special assessments for local improvements, shall be uniform upon all taxable property and persons within the limits of said city; and no property shall be exempt therefrom other than such property as may be exempt from taxation under the constitution and general laws of the state.

(1) See *ante* p. 85, § 111.

SEC. 7. The city clerk shall annually, in making his report under section 48, of ordinance No. 10, particularly specify the probable liabilities of said city during the current fiscal year, as follows:

For principal of bonded debt (if any).....$——
" interest on bonded debt (if any).....$——
" salaries.....$——
" sidewalks.....$——
" streets and alleys.....$——
" sewerage fund(not exceed one mill on $1).....$——
" lamps and lights.....$——
" printing, rent and fuel.....$——
" miscellaneous expenses.....$——

He shall also state the probable aggregate revenue from fines, dog tax, street labor, licenses and other sources of revenue other than direct taxation; and the city council shall in the said annual appropriation bill, fix the amount necessary to liquidate each of the aforesaid liabilities, and shall certify only to the county clerk aforesaid, such aggregate amount thereof as may be necessary to be raised by direct taxation.

SEC. 8. And it shall be the duty of the city treasurer to keep a separate account of each of the aforesaid items of liability as fixed annually by the city council, and shall credit each its relative amount of the aggregate amount raised by general taxation, leaving the deficiency, if any, to be supplied, if necessary, by order of the city council and out of the city revenue from other sources.

SEC. 9. The revenue arising from fines, dog tax, street labor, licenses, and other sources, than by general taxation, shall not be credited to any appropriation, except by an express order of the city council; but the surplus fund belonging to any appropriation (except such special debts as may be expressly provided for in the manner prescribed in section 5 of this ordinance) may be employed, by order of the city council, in the payment of any liability provided for in the annual appropriation bill of said city.

SEC. 10. This ordinance shall be known as ordinance No. —.
Passed ———, 18—.
Approved ———, 18—.
Published ———, 18—.

A. B., Mayor.

{ L. S. } Attest:
C. D., City Clerk.

Form of ordinance, styled the annual appropriation bill.

[See *ante* p. 77, § 89.

ORDINANCE NO. —.

ANNUAL APPROPRIATION BILL.

AN ORDINANCE making the annual appropriations for the current fiscal year.

SECTION 1. *Be it ordained by the city council of* ————, That there be and hereby is appropriated to be provided for by the general tax-levy for the current fiscal year the aggregate sum of ——— Thousand Dollars, for the following purposes, to-wit:

1. Interest on public debt and sinking fund.....$——
2. Engineer department.....$——
3. Police department.....$——
4. Street lighting with gas.....$——
5. City court and law department.....$——
6. Officers fees and salaries.....$——
7. Health department.....$——
8. Fire department.....$——
9. Public library and reading room.....$——
10. Contingencies.....$——

Making a total amount appropriated for the purposes aforesaid of—— thousand dollars.

SEC. 2. This ordinance shall be known as ordinance No. —
Passed ———, 18—.
Approved ——— 18—.
Published ———, 18—.

A. B., Mayor.

{ L. S. } Attest

C. D., City Clerk.

Form of ordinance for annual tax levy.

[See *ante* p. 85, §111.]

ORDINANCE NO. —.

AN ORDINANCE providing for the levy, assessment and collection of taxes for the fiscal year, A. D. 18—.

SECTION 1. *Be it ordained by the city council of* ————, That there shall be levied, assessed and collected upon the personal and real property, within the corporate limits of the city of ———, as the same is or may be returned by the assessor of said city for the year one thousand eight hundred and ———:

The sum of *six thousand* dollars for school and educational purposes;

And the sum of *two thousand* dollars for fire and water purposes;

And the sum of *three thousand* dollars for streets, bridges and sidewalks;

And the sum of *five hundred* dollars for cemetery purposes;

And the sum of *three thousand* dollars for general contingent and miscellaneous purposes—making a total aggregate sum to be levied, assessed and collected of *sixteen thousand* dollars.

SEC. 2. The city clerk shall file a certified copy of this ordinance with the county clerk of the county of ———, and State of Illinois, on or before the —— day of ———, A. D. 18—, so that the tax may be by him extended on the Collector's books for said year, agreeable to the statute in such case made and provided.

SEC. 3. This ordinance shall be known as ordinance No. —.

Passed ———, 18—.
Approved ———, 18—.
Published ———, 18—.

A. B., Mayor.

{ L. S. } Attest:
C. D., City Clerk.

III. FORMS OF RULES OF PROCEEDING FOR CITY COUNCILS AND BOARDS OF TRUSTEES.

City Councils.—The law provides that the city council shall determine its own rules of proceeding. See *ante* p. 29, § 35. In the absence of special rules, as contemplated, a city council, like any other deliberative assembly, would, by force of usage, be governed by the general principles of parliamentary law, which are set forth at the close of this work, in a style adapted to smaller local assemblies, like city councils and boards of trustees. Special rules adopted by deliberative assemblies, operate as a modification of the general rules of parliamentary law to the extent provided, the same as statute laws operate upon the common law.

A deliberative assembly, composed of the number of members which a city council will necessarily have, will find it necessary to adopt rules of proceeding by which their deliberations may be regulated. There are many things which circumstances will require in their proceedings which are not met by the general rules of parliamentary law; and there are frequently some of those general rules which it may be found expedient to modify or change to some extent.

The following special rules of proceeding, which have been taken to some extent from those adopted by some of the larger cities of the state, are given here as a precedent from which a set of rules may be framed to suit any occasion:

Form of rules of proceeding for city councils.

[See *ante* p. 29, § 35.]

ARTICLE I.

OF THE BOARD.

SECTION 1. Upon a call of the board, the names of the members shall be called in alphabetical order, and the absentees noted; after which the names of the absentees shall again be called over, and those who do not appear may be sent for by a special messenger or the marshal, and may, by him, be taken into custody wherever found.

SEC. 2. When a member shall be discharged from custody, the board shall determine whether such discharge shall be with or without defraying the expense of the special messenger.

ARTICLE II.

OF THE MAYOR.

SECTION 1. The mayor shall take the chair precisely at the hour of meeting, and immediately call the members to order.

SEC. 2. He shall preserve decorum and order; he may speak to points of order in preference to members of the board, and shall decide questions of order, subject to an appeal to the board by any member; on which appeal no member shall be permitted to speak more than once.

SEC. 3. He shall examine and correct the minutes of the proceedings of the board before they are read.

ARTICLE III.

OF COMMITTEES.

SECTION 1. Ten standing committees shall be appointed, to-wit:

1. A committee on ways and means.
2. A committee on streets and alleys.
3. A committee on grades and drains.
4. A committee on claims.
5. A committee on fire department.
6. A committee on railroads.
7. A committee on public buildings and public grounds.
8. A committee on waterworks.
9. A committee on police.
10. A committee on ordinances.

SEC. 2. It shall be the duty of the committee on ways and means to take into consideration all such reports and propositions relating to the city treasury, as may be referred to them by the board; to inquire into the state of the city debt, its finances, revenue and expenditures. They shall report such provisions and arrangements as may be necessary, touching the city debt, finances, revenue and expenditures, and the appropriation of moneys, as will add to the economy of the different financial departments of the city, and secure the accountability and faithfulness of the different officers concerned therein.

SEC. 3. It shall be the duty of the committee on streets and alleys to take into consideration all matters referred to them, touching the streets, avenues, lanes and alleys of the city, and to report thereon to the board; to examine the different streets, avenues, lanes and alleys of the city, and report to the board the actual condition, changes or alterations that may be required in any of them; the repairs, alterations or improvements that are needed in any of the pavements, and report such amendments as are necessary to render the ordinances relating to the streets, avenues, lanes and alleys of the city as perfect as possible.

SEC. 4. It shall be the duty of the committee on grades and drains to take into consideration all matters referred to them, relative to the grade or drainage of all places in the city, and report thereon to the board; to examine all streets, lanes, avenues, alleys, or other places of the city, and report to the board the actual grade and drainage of the same, and the repairs, alterations or improvements necessary to be made in any of them, in order to obtain a practical and thorough system of grades and drainage for the city.

SEC. 5. It shall be the duty of the committee on claims to examine into and report upon all claims against the city referred to it by the board.

SEC. 6. It shall be the duty of the committee on fire department to take into consideration all matters referred to them in relation to the fire companies of the city, and report thereon without delay.

SEC. 7. It shall be the duty of the committee on railroads to examine into the condition of railroad tracks and crossings, and to report and to recommend measures tending to improve the comfort and security of the city, and of all others in the city, exposed to the operation of railroads.

SEC. 8. It shall be the duty of the committee on public buildings and public grounds to take into consideration all matters referred to them, touching the building or grounds belonging to or used by the city, and all other improvements or public places not specially committed, by these

rules to some other committee, and report to the board thereon, when required, the actual condition of the same, the changes or alterations required in any of them, and what further improvements of any kind, in their opinion, are necessary for beautifying the same, to the well-being of the city.

SEC. 9. It shall be the duty of the committee on waterworks to take into consideration all matters referred to them relating to the providing of the city with all water necessary for the use of the inhabitants thereof, the sprinkling of the streets and the suppression of fires, and report to the board suitable plans for the prompt establishment of the same.

SEC. 10. It shall be the duty of the committee on police to take into consideration all subjects referred to them, and to report the actual condition of the police, together with all the alterations and improvements that may be deemed necessary for the proper control and efficient workings of the police department.

SEC. 11. It shall be the duty of the committee on ordinances to consider all matters referred to them, and to report thereon to the board. They shall examine all ordinances ordered to be engrossed or enrolled, correct all clerical, orthographical, grammatical or other errors, and arrange the punciuation before they are returned to the board.

SEC. 12. Each standing committee shall consist of five members.

SEC. 13. Each select committee, unless otherwise ordered, shall consist of three members.

SEC. 14. The report of a committee shall be read by the clerk, and become, without debate, a part of the miuutes of the meefing at which it is offered, unless for special reasons it shall be recommitted.

SEC. 15. No committee shall sit during the sitting of the board without special leave.

SEC. 16. Whenever a resolution is presented to the board by any member, he may, at his option, before any amendment is made, or question taken on it, request that it may lie over until the next meeting of the board; in which case it shall have precedence of the regular orders of the day, and shall be considered as the unfinished business of the board.

ARTICLE IV.

ON ORDINANCES.

SEC. 1. Every bill or ordinance shall be read at two different meetings of the board.

SEC. 2. The first reading of a bill shall be for information; and if opposition be made to it, the question will be "shall this bill be rejected."

SEC. 3. Upon the first reading of a bill, the chairman shall state that it is ready for committment; if committed, then the question shall be whether to a select or standing committee, or to a committee of the whole board.

ARTICLE V.

OF THE ORDER OF THE BUSINESS OF THE BOARD.

SECTION 1. On the appearance of a quorum and the call of the roll, the minutes of the proceedings of the preceding meeting shall be read.

SEC. 2. After the minutes are read, business shall be disposed of in the following order:

1. Reports from city officers.
2. Petitions, memorials and remonstrances.
3. Reports from standing committees.
4. Reports from select committees.
5. Propositions and motions.
6. Second reading of bills.
7. Bills, reports and other business lying on the table.
8. Other business of the board.
9. Unfinished business.
10. The orders of the day.

SEC. 3. The chairman shall, at each meeting, announce to the board the business, in order agreeably to the preceding rule.

SEC. 4. No business shall be taken up or considered until the class to which it belongs shall be declared in order, and no business other than reports from city officers filed with the city clerk, shall be acted upon or considered in its class, unless presented by a member of the council, and then only upon the members in alphabetical order.

ARTICLE VI.

OF PROCEEDINGS, DECORUM AND DEBATE.

SECTION 1. When any member is about to speak in debate, and deliver any matter to the board, he shall rise from his seat and respectfully address himself to the presiding officer as "Mr. President;" he shall confine himself to the question under debate, and avoid personalities.

SEC. 2. When two or more members shall rise at once, the chairman shall name the member who is to speak first, the other rising having the preference to speak next.

SEC. 3. When a motion or resolution is made and seconded, it shall be handed to the chairman and read aloud by the clerk before it is debated.

SEC. 4. No motion or resolution shall be stated or debated until it is seconded, and when stated by the chairman, or read by the clerk, shall be deemed in possession of the board, but may be withdrawn at any time before decision or amendment.

SEC. 5 Every resolution shall be reduced to writing.

SEC. 6. No new motion or proposition shall be admitted, under color of amendment, as a substitute for the motion or proposition under debate.

SEC. 7. When a question is under consideration, no motion or proposition shall be received but:

1. To adjourn.
2. A call of the board.
3. To lie on the table.
4. The previous question.
5. To commit to a standing committee.
6. To commit to a select committee.
7. To amend.
8. To postpone to a time certain.
9. Within the present meeting.
10. To postpone indefinitely.

Which several motions shall have precedence in the order in which they are arranged.

SEC. 8. A motion to adjourn shall always be in order, unless a member is speaking, and shall be decided without debate, and no member shall leave his seat until the result is declared by the chair.

SEC. 9. The previous question shall be in this form: "Shall the main question be now put?" It shall only be admitted when demanded by a majority of the members present, and until it is decided, shall preclude all amendment and further debate, and shall be decided without debate.

SEC. 10. Any member may call for a division of the question when the sense will admit of it.

SEC. 11. A motion for an amendment, until decided, shall preclude all further amendment to the main question.

SEC. 12. Motions and reports may be committed at the pleasure of the board.

SEC. 13. When the reading of a paper is called for, and the same is objected to by any member, it shall be determined by a vote of the board.

SEC. 14. No member shall speak more than twice on the same question without leave of the board, nor more than once until every member choosing to speak shall have spoken, nor more than fifteen minutes at a time.

SEC. 15. If any member in speaking or otherwise, shall transgress the rules of the board, the chairman, or any member, may call him to order, in which case the member called to order shall immediately sit down, unless permitted to explain, and the board shall, if appealed to, decide the case, but without debate. If there be no appeal, the decision of the chair shall be submitted to. If the decision be in favor of member called to order, he shall be at liberty to proceed; if otherwise, and the case requires it, he shall be liable to the censure of the board.

SEC. 16. All questions shall be propounded in the order in which they are moved, except privileged questions.

SEC. 17. In filling up blanks, the largest sum and longest time shall be put first.

SEC. 18. Whilst the chairman is putting any question, or addressing the board, no one shall walk out or across the room in which the board is sitting, nor, in such case, or when a member is speaking, or the clerk reading the minutes, shall any member entertain private discourse.

SEC. 19. Questions shall be distinctly put in this form: "All in favor of (as the question may be) say aye; and after the affimative voice is expressed: "All opposed say no."

SEC. 20. No member shall vote on any question if he was not present when the question was put, except by leave of the board.

SEC. 21. Every member who shall be present when a question is put, shall give his vote unless the board, for special reasons, shall excuse him; and no member shall vote except in his seat.

SEC. 22. When a question is postponed indefinitely, the same shall not be acted upon again at the session at which it was postponed.

SEC. 23. When a motion has once been made and carried in the affirmative or negative, it shall be in order for any member who voted on that side which prevailed, to move for a reconsideration thereof at the same meeting, or at the next meeting of the board, but not thereafter nor at any time after the paper on which the vote was given is out of the possession of the board; but no question which has been once decided and reconsidered and decided a second time shall again be considered.

SEC. 24. On taking the yeas and nays on any question, the names of the members shall be called by wards in numerical order, each member shall answer from his seat, and the absentees noted, and the names of the absentees again called over.

SEC. 25. All questions relating to the priority of business to be acted upon shall be decided without debate.

SEC. 26. No member of the board shall be allowed to speak, offer a resolution, make a report, or introduce an ordinance, except in his place.

ARTICLE VII.

OF COMMITTEES OF THE WHOLE BOARD.

SECTION 1. It shall be a standing order for the board, during the year for which they are elected, to resolve themselves into a committee of the whole board on the state of the city.

SEC. 2. In forming a committee of the whole board, the chairman shall leave the chair, and a chairman to preside in committee shall be appointed by the chairman.

SEC. 3. Upon a bill being committed to a committee of the whole board, the same shall be first read throughout by the clerk, and then again read and debated by sections, leaving the preamble to be last considered; and after report, the bill shall again be subjected to debate and amendment by sections, before a question is taken for engrossment.

SEC. 4. All amendments made to an original motion in committee, shall be incorporated with the motion and so reported.

SEC. 5. All amendments made to a report, resolution or other matter, committed to a committee of the whole board, shall be voted and reported, as in case of bills.

SEC. 6. The rules of proceeding in the board shall be observed in committee of the whole board, as far as they are applicable.

SEC. 7. A majority of the members elected shall be a quorum to do business in committee of the whole board; and if at any time, a sufficient number shall not be present in committee of the whole board, the committee shall rise, the chairman shall resume his chair, and the chairman of the committee report the cause of the rising of the committee.

SEC. 8. A motion for the rising of the committee shall always be in order, unless a member is speaking, and shall be decided without debate.

ARTICLE VIII.

ON AMENDING RULES.

SECTION 1. No standing rule or order of the board shall be rescinded or changed, or new rules introduced, unless notice of the motion therefor shall have been given at a preceding meeting.

SEC. 2. No standing rule or order of the board shall be dispensed with or suspended, unless a majority of the members elected concur therein; and all motions for that purpose shall be limited to the question or proposition then pending.

Board of Trustees.—A board of trustees of a village being a small body, do not in their deliberations require the observance of rules of order to that extent as city councils, composed of larger numbers of members. They are more in the nature of an executive board, in which the application of parliamentary rules are not so much of a necessity in facilitating business. Yet it will be perfectly consistent for such boards, if they think proper, to observe all the rules of parliamentary law, the same as in a city council. Indeed, their mode of proceeding, in many respects will, from the nature of the case, be the same as that of a city council. All questions are to be settled by the votes of members, either *viva voce* or by yeas and nays. The board should be divided into appropriate committees, who will

report matters referred to them from time to time the same as in a city council, and subject to the same rules. Business before the board will be introduced by members on motions or otherwise as in other cases of deliberative assemblies. The following is suggested as a short form of rules of order, which may serve for boards of trustees, or city councils, with a small number of members.

In the following precedent the words "mayor" and "city council" are used, which in case of being adapted to villages, the words "president" and "board of trustees," or "board," can be substituted to suit the occasion:

Short Form of Rules of Proceedings for City Councils and Boards of Trustees.

1. The president shall take the chair at the hour to which the council shall have adjourned, and call the members to order. If a quorum be present he shall cause the journal of the last meeting to be read.
2. The president shall preserve order and decorum; may speak to points of order in preference to any other member, and shall decide questions of order subject to an appeal to the city council by any two members; on which appeal no member shall speak more than once, unless by leave of the city council.
3. Every question or motion when seconded, shall be stated by the president distinctly, before it is open for debate. When a question is put, if the president doubt or a division is called for by any member, the council shall decide. The president may call any member to perform the duties of the chair; but such substitution shall not extend beyond an adjournment.
4. All committees shall consist of three members, except the committees on finance, streets and alleys, claims and on schools, which shall consist of five members, and shall be appointed by the mayor.
5. Every member, previous to his speaking, shall rise from his seat and address the presiding officer as "Mr. President,"—but shall not proceed with his remarks until named and recognized by the chair.
6. If any member transgress the rules of the city council, the president or any member may call him to order, and when called to order the member shall take his seat, unless permitted to explain.
7. No member shall speak more than twice on the same question, unless permitted by the city council.
8. Every member, when a question is taken, shall vote, unless excused by the city council, unless he may be directly interested in the question, in which case no member shall vote; and every motion shall be reduced to writing, if the president or any member desire it.
9. After a report is made or a motion stated by the president, it shall be deemed in possession of the city council, but it may be amended or laid on the table, or withdrawn at any time before the question is taken.
10. When a question is under consideration, no motion shall be received but to adjourn; lie on the table; the previous question; postpone to a certain day; to commit; to amend; or postpone indefinitely—which several motions shall have precedence in the order in which they are arranged. A motion to adjourn shall always be in order, and be decided without debate.

11. A motion for the "previous question," to lay the question on the table, or to commit it until it is decided, shall preclude all amendment and debate of the main question; and a motion to postpone a question indefinitely, or to adjourn it to a certain day, shall, until it is decided, preclude all amendments to the main question.

12. The "previous question" shall be as follows: "Shall the main question now be put?"

13. When a blank is to be filled, and different sums or times proposed, the question shall first be put upon the largest sum and the longest time.

14. The ayes and nays shall be taken upon the passage of all ordinances, and on all propositions to create any liability against the city, or for the expenditure or appropriation of its money, and in all other cases at the request of any member, and shall be entered on the journal of its proceedings, and the concurrence of a majority of all the members elected in the city council shall be necessary to the passage of any such ordinance or proposition.(1)

15. Every ordinance shall be read when introduced, and lie over until a future meeting, and be printed with the proceedings before the same shall be passed.

16. When any standing or special committee shall be appointed, the clerk shall deliver the names of the committee to the chairman of the same on the day after their appointment, and the chairman shall call them together, and when a quorum of the committee is present, it shall transact such business as may come before it.

17. All standing and select committees, to whom any matter may be referred, shall report thereon in writing giving the facts and their opinion thereon, and said report shall be signed by a majority of said committee.

18. When a question before the city council contains several distinct propositions, any member may call for a division of the question, so as to take the vote on each proposition separately.

19. All petitions addressed to the city council shall be in writing, and filed by the clerk, unless withdrawn by leave of the council.

20. All reports made by committees, and all resolutions adopted by the city council, shall be filed and preserved by the clerk.

21. In all cases when a resolution or motion shall be entered on the minutes of the city council, the name of the member moving the same shall also be entered on the minutes.

22. No bill shall be allowed unless the same has been filed in the office of the city clerk on the Thursday preceding the regular monthly meeting of the council, and sworn to by the party claiming the same: *Provided*, that this rule shall not apply to money allowed by ordinance.

23. No officer appointed by the mayor, or by any member or members of the city council, shall be confirmed if in arrears for any tax due the city of ———.

24. The ayes and nays shall always be taken on a motion to adjourn.

25. The above rules of procedure and order of business shall be adhered to invariably by the city council, unless the same shall be temporarily suspended by unanimous consent.

26. All new business, introduced at any meeting, shall be referred to the appropriate committee, or lay over until the next meeting. This rule shall never be suspended unless —— members of the council vote for suspension.

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(1) Taking the yeas and nays on the passage of ordinances is regulated by the act concerning cities and villages. No rule on this subject is necessary when cities and villages are organized under said act. See p. 30, § 41.

27. The following standing committees shall be annually appointed under rule 4th, viz:

1. Finance.
2. Streets and alleys.
3. Claims.
4. Schools.
5. Ordinance.
6. Markets.
7. Railroads.
8. Health.
9. Real estate.
10. Police.
11. Public buildings.
12. Fire department.
13. Gas.
14. Levee.
15. Water works.

ORDER OF BUSINESS.

1. Petition.
2. Reports of officers.
3. Special written communications.
4. Reports of standing committes.
5. Reports of select committees.
6. Unfinished business.
7. Motions, resolutions, etc., on call of roll by wards.

IV. GENERAL RULES OF PARLIAMENTARY LAW, APPLICABLE TO CITY COUNCILS AND BOARDS OF TRUSTEES.

Parliamentary Law consists of rules which are recognized as governing proceedings in deliberative assemblies. It is so called from the rules of order existing from long established usage in the Parliament of England. The legislative assemblies of the several states, and the legislative branch of the general government of the United States, being formed upon the principle of the English Parliament, have adopted the like rules for their government, and by general custom in this country, these rules are recognized in all deliberative assemblies. Legislative assemblies, however, for the purpose of certainty, generally adopt by express vote, the rules of parliamentary law, as expounded by some particular writer on the subject, qualified as circumstances may demand, by various rules of their own. A deliberative assembly is a congregation or convention of persons for the consideration of matters in which all are concerned.

Public Meetings.—In many of the states of the Union, counties are divided into several districts called towns or townships, the inhabitants thereof becoming a body corporate. The law provides for stated meetings of the electors, called town meetings, for the consideration of town affairs. In the absence of any provision to the contrary, these assemblies conduct their proceedings according to the rules of parliamentary law. Boards of supervisors as constituted by the laws of Illinois, in counties under township organization, are deliberative assemblies, and their proceedings are conducted according to general parliamentary rules.

City councils are likewise deliberative assemblies, and in conducting their proceedings the rules of parliamentary law are applicable as in other cases of deliberative assemblies. And such rules may with propriety also be applied to boards of trustees of villages, although composed of a smaller number of members than are usually in a city council. The necessity for a strict observance of such rules in a body of small number of members, does not however exist to that extent as in case of bodies of large numbers. Parliamentary law applies only to bodies acting and conducting their proceedings as deliberative assemblies.

Public meetings by voluntary assent are of daily occurrence. These meetings are sometimes convened at the instance of committees appointed for that purpose; and are frequently convened at the request of citizens who desire such meeting, on public notice, either by hand-bill notices posted, or by notice in a newspaper.

Organization of Public Meetings.—The first business at a public meeting is its organization. This is effected by choosing a presiding officer to keep order, and a secretary to record the proceedings of the meeting, after which

it is competent for the meeting to choose such other officers as may be deemed necessary. In case the meeting is composed of a very large number of persons, the presiding officer is called *president;* if not he is usually styled *chairman* of the meeting.

When the people have assembled, and the hour of meeting arrives, the meeting should be called to order. In case the meeting has been convened at the instance of a committee, the chairman or person first named on the committee should call the meeting to order. In case it was convened at the instance of citizens, the first named on the list should assume this duty, otherwise, the proper person for this purpose, would be the mayor of the city, or principal public officer, or most prominent person present.

The person calling the meeting to order should take such position in the room as to command the attention of the audience, and announce as follows: "Gentlemen, the hour at which this meeting is to convene having arrived, it is proposed that we proceed to organize; I therefore nominate Mr. A. B. as chairman." The nomination being seconded, he proceeds: "Gentlemen, those who are in favor of such nomination, will say 'aye'; those opposed will say 'no'." The vote being taken, if carried in the affirmative, he will say, "It is carried," or "it is agreed to; Mr. A. B. is chosen chairman of this meeting; will he please come forward and take the chair?"

If the meeting is deemed one of importance, so that the position of chairman would be deemed one of considerable honor, it is customary for the presiding officer to return thanks to the meeting for the honor conferred; this he will do on taking the chair.

As every deliberative body should have a secretary, the chairman will say, "Gentlemen, the first business in order will be the election of a secretary." If no other person moves, the person who called the meeting to order should also nominate a secretary; but any person present may make such nomination.

The secretary being chosen, the further business will be directed by the meeting. If the meeting is called for some particular purpose, it is proper in selecting a chairman to choose some person best acquainted with the object of the meeting; if this is the case, the chirman should proceed after the election of secretary, and state the object of the meeting. If not, he should say, "The chair is not fully advised as to the object of this meeting, it will be proper that the object of the meeting be stated by some person to whom it is best known." It will be generally understood who this person is, and a motion may be made calling on him for that purpose, or he may be called out by several voices.

It will be proper for the meeting to choose one or more vice-presidents, and one or more assistant secretaries. This is done where the meeting is large—generally as a means of manifesting the importance of the occa-

sion. They will also choose such committees as may be deemed necessary.

When an assembly is composed of delegates chosen by and representing others, the organization is, in the first instance, considered temporary, upon which measures are taken to ascertain who are members; this is usually done by the appointment of a committee to examine the credentials of those claiming to be members, and to report accordingly.

Until this is done there is a presumption that all present who assume to take part in the assembly, are entitled to do so, as it is supposed that no gentleman would be guilty of imposition in this respect. At the time of appointing the committee on credentials, it is customary also to appoint a committee to report the names of persons for permanent officers of the assembly or convention.

After the report of the committee on credentials is adopted, the assembly, on motion of some member, proceeds to the election of permanent officers. If the names of candidates have been recommended by a committee, the adoption of their report is regarded as making choice of the persons they have recommended. In the case of an assembly composed of delegates, unless it is an important occasion, it is not customary for the temporary chairman to return thanks to the convention, or to allude to the object of the meeting; he simply acts as moderator for the time being, for the purpose of organization.

It is proper that the permanent chairman, or president, on assuming his duties, should express his thanks for the honor conferred upon him, and state in general terms the object of convening the assembly.

In case the assembly or convention of delegates is small, it is customary to consider the temporary organization as permanent from the beginning.

When the organization of the meeting is completed by the election of officers, the chairman should announce, "The meeting is now fully organized, and ready to proceed to business." If no motion is made or business presented, it is proper for the chairman to say, "What is the pleasure of the meeting?" And at any time when there is no business before the meeting and there is no indication of presenting anything, the chairman should announce, "Gentlemen, there is no question before the meeting; what is your further pleasure?"

Manner of presenting business.—Every member of a deliberative body, in the absence of express rule to the contrary, has the right to present propositions for the action of the assembly. This is by a simple *motion* or by formal resolution. But where the object of the meeting is of a general nature, or where the subject does not seem to have been duly matured by any one present, it is customary to appoint a committee to prepare and report resolutions expressive of the sense of the meeting. When a member desires to present a proposition for the action of the assembly which is of importance, it should properly be reduced to writing; such propositions

are called resolutions, and commence thus: "*Resolved*, That." But a matter of less importance may be by a mere motion, which need not be in writing unless for purpose of certainty in conveying the ideas of the mover.

Motions, and manner of proceeding.—A motion is simply a proposition of a member, as his individual sentiments. If the proposition offered prevails, it is then adopted as the conclusion or sense of the assembly.

But the proposition by a single member is not considered sufficient to claim attention from the assembly; it is therefore required that it shall be approved or *seconded* by one other member. This being done, the mover is entitled to have it put to the assembly. In general practice, however, all motions are presumed to be seconded, unless the point is made and found to be otherwise; in which case the presiding officer could not properly take notice of the motion.

In general no proposition or question can be acted upon except on *motion* of a member. The manner of proceeding is for the member to rise in his place, and say, "Mr. Chairman." Before he can proceed it is expected that he will have the permission, or as it is termed "recognition of the chair." The chairman therefore responds: "The gentleman from," naming the district from which he is a delegate, or, "the gentleman on my right," or similar designations. The rule in deliberative assemblies being that no member shall be addressed or spoken of by his *name* where it can be avoided. The person offering the motion, being recognized by the chair, proceeds, "I move, sir, that," stating his motion. The member desiring to *second* the motion should rise and say, "I second the motion." Before any remarks upon the motion or proposition are in order, it must be stated by the chair. The chairman should say, "Gentlemen, it is moved that" (stating the substance of the motion). It is sometimes the practice for the chairman to say, "Gentlemen, you have heard the motion," and then proceed to put the question. But this is improper; a motion is not the property of the assembly, or, in other words, not a subject before them, until it is *stated* by the chairman.

When a motion is made and seconded, it becomes the property of the assembly, and cannot be withdrawn or modified by the mover except by leave of the assembly, on a motion made for that purpose.

After the chairman has stated a motion, which he may do without rising, if no member interposes, he should proceed promptly to put the question to the assembly; this he does by rising, when he will say, "Gentlemen, those in favor of the motion will say *aye*"—"those opposed will say *no*." If it is decided in the affirmative, he will say, "The motion has prevailed," or, "It is carried." If it is decided in the negative, he will say, "The motion is lost," or, "It is decided in the negative."

After the vote has been declared by the presiding officer, it becomes final. Sometimes, when the vote is nearly equal, it is difficult to determine

which has prevailed. In such case the presiding officer should not hastily announce the vote. He should say, "The ayes *seem* to have it," or, "The noes *seem* to have it," as the vote may appear. If no member interposes, he may then proceed and declare the vote as it seems to him to be.

But if any member doubts the vote as the chairman states that it seems to be, he may rise and call for a division of the house. This may be done, as the call indicates, by dividing the members of the assembly—by having those who vote in the affirmative stand on one side of the room, and those in the negative on the opposite side; or by the "up-lifted hand," —the latter is the most usual—or simply by rising. In either case the chairman will direct the secretary to count the votes on each side, and report to him the result. The most usual and satisfactory course is by rising.

When a member calls for a division of the house, in the absence of any express rule made by the assembly on the subject, the presiding officer should proceed thus: "A division is called for; all those in favor of the motion will rise in their place and stand until counted." When those in the affirmative are counted, and the number is reported to the chairman, he will announce the number and say: "All those opposed to the motion will in like manner rise and stand until counted," which being done, the chairman announces the number, and declares the motion carried or lost according to the fact. It is perhaps the duty of the chairman to count the vote, but it is competent for him to direct the secretary to do so.

In case any member desires it, he may, at any time before the vote is declared by the chairman, call for the appointment of *tellers* to count and report the result of the vote, instead of leaving it to the chairman. This is done by the chairman on request of any member. It is customary to appoint one person from each side, or each party in the assembly. When a division is desired, it must be called for before the result has been finally declared by the chairman. After he has declared the vote, it is final, and a division cannot be called for.

Motions in General.—When a motion is made which the members are inclined to meet by a direct vote, on the merits, it is put to the assembly, either at once or after debate, and disposed of. But as propositions may strike different minds in different forms, it often occurs that the assembly, on motion of some member, will dispose of the question in some other manner; for this purpose there is a class of motions resorted to, called *subsidiary* motions, which may be entertained while the original or principal motion is pending, thus:

1. The assembly may desire to suppress the proposition, either for a time or altogether. The proper subsidiary motions for this purpose are the *previous question* and *indefinite postponement.*

2. The assembly may be willing to consider the proposition, *but not at that time.* The usual motions in such case are, *postponement* to some future time, or to *lie on the table.*

3. The form in which the proposition is submitted may be considered defective in some particular, a correction of which may require more deliberate consideration than the assembly can conveniently bestow upon it. In such case the proper motion is to *refer* the proposition *to a committee.*

4. The proposition of itself may be satisfactory, if changed or qualified in some particular. In this case the proper motion is *to amend.*

The previous question.—The practice under this motion has not been uniform. In legislative assemblies it is generally regulated by rules prescribed; the usual course, however, in the absence of express rules, is this: When a member desires a vote to be taken on a proposition without further debate or delay, he moves the *previous question*, this being seconded, the presiding officer says: "The previous question is moved. Shall the main question be now put? Those in favor will say 'aye'—those opposed will say 'no.'" If carried in the affirmative, he will say, "The main question is ordered." In this case the assembly must come to a direct vote on the main question, without debate, and no motion can be entertained to dispose of the question in any other manner; the *main question* is the original proposition, with pending amendments, if any, each of which is to be disposed of in its proper order.(1)

Indefinite postponement.—This motion is decided without debate. If in the affirmative it removes the question from before the assembly as effectually as if it never had been pending. A motion to postpone to a day beyond the sitting of the assembly is of the same effect as indefinite postponement.

Motion to postpone.—When it is desired to consider a proposition at some future day, the proper motion is to *postpone* or *lay on the table.* In either case the subject may be taken up subsequently by a vote of the assembly.

Motion to commit.—When it is desired to render a proposition more perfect before consideration. it is usually done by referring it to a committee. If there is a *standing* committee on that subject, the motion should be to refer to that committee. If not, then to a *select* committee. A motion to refer to a select committee, and a standing committee, may be made and pending at the same time; in which case, the latter motion takes precedence, and should be first put to the question. A part or the whole of a subject may be referred; or portions may be referred to several different committees.

(1) If the motion for the previous question is lost, or decided in the negative, the general rule is stated to be, that the main question is taken out of the assembly for the day, so that there is then nothing before it to postpone, commit, or amend. Cushing's Manual, § 175. But in Illinois the practice is that the main question is still pending as if no vote had been taken.

Motion to Amend.—Amending a proposition is either by adding words, or taking words from it, or by transposition of words. This is accomplished under different modes of proceeding. Under this head may be classed the following:

1. *Filling blanks.*—It often happens that propositions are introduced, leaving blanks to be filled by the assembly, either with times and numbers, or with provisions analogous to those of the proposition itself. In the latter case, blanks are filled in the same way that other amendments are made, by the insertion of words. In the former, propositions to fill blanks are not considered as amendments to the question, but as original motions, to be made and decided before the principal question.

In case of blanks to be filled with *time* and *number*, motions may be made for that purpose, and the question taken on each by itself. Several motions for this purpose may be made and pending, before any of them are put to the question. The usual rule is to take the question, first, on the *highest number*, the *largest sum*, and the *longest time*..

2. *Striking out.*—If an amendment is proposed by striking out a paragraph or certain words, and it is rejected, it cannot be again moved to strike out the same words, nor a part of them; but it may be moved to strike out the same words with others, or to strike out a part of the same words with others, provided it becomes thereby a different proposition.

3. *Amendment by inserting.* If an amendment is proposed by inserting or adding a paragraph or words, and it is rejected, it cannot be again moved to insert the same words, or a part of them; but it may be moved to insert the same with others, or a part of the same words with others, if the coherence really make them different propositions.

4. *Striking out and inserting.*—This combination of propositions may be divided by a vote of the assembly. When the proposition is divided, the question is first to be taken on striking out; if that prevails, then on inserting; if the former is decided in the negative, the latter fails of course.

5. *Division of a proposition.*—Where a proposition is composed of two or more parts, which are susceptible of division into several questions, it is a compendious mode of amendment to divide the motion, if deemed advisable, into separate questions to be separately voted upon. This may be done by order of the assembly, on motion, as in other cases.

The question as divided becomes a series of independent propositions. Assemblies sometimes provide by express rule for the division of a question on demand of a member.

6. *Amendment to an amendment.*—Custom or usage has established a rule whereby a proposition may be entertained to amend an amendment, but there can be no amendment of an amendment to an amendment.

Of the Order and Succession of Questions.—It is a general rule that where a proposition is pending before a deliberative assembly no other can be entertained until that is disposed of, unless it be either: *first*, a privileged question; *secondly*, an incidental question; or, *thirdly*, a subsidary question or motion.

1. *Privileged questions.*—Questions of this nature are: 1. Motions to adjourn. 2. Motions or questions relating to the rights and privileges of the assembly, or of its members individually. 3. Motions for the orders of the day.

A motion to adjourn takes the place of all other questions whatever. It is not debatable, and ordinarily not susceptible of amendment.

A motion to adjourn to a time fixed can be amended, by offering some other time, and is debatable.

Question of privilege come next in order, and take precedence of all other motions except that of adjournment. They are such as concern the rights and privileges of the assembly, or of its individual members.

Orders of the day come thirdly in succession, under the head of privileged questions. When the consideration of a subject has been assigned for a particular day, by an order of the assembly, the matter so assigned is called the order of the day for that day.

2. *Incidental questions.*—These are such as arise out of other questions, consequently are to be decided before those which give rise to them. Of this nature are: 1. Questions of order; 2. Motions for the reading of papers, etc.; 3. Leave to withdraw a motion; 4. Suspension of a rule; 5. Amendment of an amendment.

Questions of order are those questions raised by any member as to a breach of any rule occurring. It is the privilege of any member to raise questions of order in such cases.

Reading of papers brought before a deliberative assembly may be called for by any members who desires the reading.

Withdrawal of motions is allowed on the part of the mover, by leave of the assembly, which is to be obtained by a vote on motion as in other cases.

Suspension of a rule of the assembly may be granted by a vote thereof. This is usually obtained at the instance of a member to consider a proposition which would otherwise not be in order.

Amendment of an amendment is allowable, as we have already seen; the amendment to the amendment must be first put.

3. *Subsidary questions.*—These, as before remarked, are those which relate to a principal motion. Subsidary motions in common use are: to lie on the table; the previous question; postponement, either indefinitely or to a day certain; commitment and amendment.

To lie on the table is a motion usually resorted to in common practice when the assembly desires to put a proposition aside without giving any expression upon its merits. It is not debatable nor susceptible of amendment. It takes precedence of and supercedes all other subsidary motions. If decided in the affirmative, all motions or propositions connected with the principal question, are removed with it from before the assembly, until taken up by a vote thereof.

The previous question stands in equal degree with all other subsidiary motions, except the motion to lie on the table.

The motion to postpone is either indefinite, or to a time certain; and in both these forms may be amended;—in the former by fixing a time certain; in the latter by substituting one time for another. The latter case is treated like filling blanks.

A motion to commit, or recommit, may be amended by substitution of one kind of committee for another, or by enlarging or diminishing the number of the committee as proposed, or by instructions to the committee. It stands in the same degree with the previous question and postponement—but it takes precedence of a motion to amend.

A motion to amend stands in the same degree only with the previous question and indefinite postponement, and neither, if first moved, is superceded by the other. But it is liable to be superceded by a motion to postpone to a day certain. It may also be superceded by a motion to commit.

The following example is given to illustrate the successive order of questions: Suppose *first* a principal question is proposed, *second*, a motion is made to amend the principal question, *third*, a motion to commit, *fourth*, a question of order arises in the debate, which gives occasion to, *fifth*, a question of privilege, and *sixth*, a subsidiary motion, as to lie on the table. All these questions may be pending at the same time, and take rank in the order named. The regular course of proceeding requires the motion to lie on the table to be first put. If this is negatived, the question of privilege is then settled; after that comes the question of order, then the question of commitment; if that is negatived, the question of amendment is taken; and lastly, the main question.

Of reconsideration.—A deliberative assembly may reconsider a vote already passed, whether affirmatively or negatively. For this purpose a motion is made, as in other cases, that such a vote be reconsidered; if it prevails, the matter stands before the assembly in precisely the same state and condition as if the vote reconsidered had never been passed. In the absence of any express rule of the assembly, a motion to reconsider is made in the same manner as any other motion.

Of committees.—The business of deliberative assemblies is facilitated by aid of committees; they are of three kinds, *select committees*, *standing committees* and *committee of the whole.*

Select committees are those appointed to consider a particular subject.

Standing committees are those who are appointed to continue during the whole term of the assembly, to consider all matters of a certain character named during the time.

A committee of the whole is a committee comprising all the members of the assembly to consider any subject referred to them.

Select and standing committees, in the absence of any express rule or vote of the assembly, are appointed by the presiding officer. When a motion is made for the appointment of a committee, the motion usually includes the number of which it is to consist. If no vote is taken as to the manner of appointment, the presiding officer should proceed to appoint. It will be unnecessary for him to inquire of the assembly as to how they will have the appointment made; the fact that they have given no expression on the subject implies that the appointment shall be made by the chair.

The person first named on a committee is considered the chairman; but in the absence of any rule to the contrary, the committee may make choice of some other person as chairman, if they desire to do so.

When a committee have considered a proposition, they present the result to the assembly, which is called their *report.* It is usually in writing, and is announced to the assembly by the chairman, or some member of the committee selected for that purpose, who, rising in his place, says: "Mr. President" [*or*, Mr. Chairman, *as the case may be*] 'The committee to whom was referred the subject of [*stating the matter referred*] have had the same under consideration, and have instructed me to report that" [*here follows the report.*]

After the report is made, the proper motion is, on the reception of the report; but in practice the report is received without such motion, unless objection is made, in which case a formal vote is necessary. After the report is received, the committee are discharged without any action of the assembly.

The report thereupon becomes the property of the assembly, and the question recurs on its adoption. The presiding officer will proceed and so state the question, without any formal motion being made.

After a report is adopted, the recommendations of the committee become the sense of the assembly.

Conclusion.—The foregoing is a brief summary of the general principles of parliamentary law for the regulation of proceedings in deliberative assemblies. Limited space does not admit of an extended treatise on the subject; but sufficient has doubtless been given for ordinary purposes.

In conducting proceedings in deliberative assemblies, much depends upon the presiding officer. According to the popular idea of such a functionary, he becomes little more than a graven image, or fixed statue, when

in fact he should be the most active man in the assembly. He should have his attention in all directions as much as possible, at the same time, and be quick to recognize any member who rises and addresses him. As soon as a motion is offered he should proceed promptly, without hesitation or delay, and state it, in a full and clear voice. If no one rises to speak to it, he should proceed just as promptly to put the motion. It is no part of his duty to invite debate.

An example of promptness and diligence on the part of the presiding officer gives spirit to the assembly, and business is conducted with more dispatch and greater satisfaction.

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